



AGENDA FOR THE CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING

6 May 2019 - 6.00pm

Location:

**Council Chambers
Cnr Chapel Road and the Mall,
Bankstown**

ORDER OF BUSINESS

APOLOGIES AND DECLARATIONS

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

BANKSTOWN WARD

- 1 9 Abel Street, Greenacre**
- Demolition of existing structures and construction of a single storey dwelling with basement/attic storage, front fence, in ground swimming pool and detached secondary dwelling 5

BASS HILL WARD

- 2 10 Carysfield Road, Georges Hall**
- Construction of a small metal clad storage shed (with awning) 31
- 3 2A Foley Street, Georges Hall**
- Alterations and additions to an existing single storey dwelling with the partial demolition of the roof, addition of the first floor and associated external finishes 45

CANTERBURY WARD

- 4 20-22 Wardell Road, Earlwood**
- Amalgamation of three lots into one. Demolition of two dwelling houses and factory structure and construction of a boarding house development consisting of two x two storey boarding houses with 16 rooms each (total of 32 rooms), with associated car parking and landscaping 71

ROSELANDS WARD

- 5 31-33 Isabel Street, Belmore**
- Use of existing gymnasium for functions/social events associated with the Greek Orthodox Parish in addition to the current usage as gymnasium for the All Saints School 125

DELEGATION

- 6 Delegation of Specific Functions from Canterbury Bankstown Local Planning Panel to the General Manager** 159

Canterbury Bankstown Local Planning Panel - 6 May 2019

ITEM 1	9 Abel Street, Greenacre
	Demolition of existing structures and construction of a single storey dwelling with basement/attic storage, front fence, in ground swimming pool and detached secondary dwelling
FILE	DA-25/2019 – Bankstown Ward
ZONING	R2 Low Density Residential
DATE OF LODGEMENT	21 January 2019
APPLICANT	Medina Developments
OWNERS	Mr Omar Alameddine
ESTIMATED VALUE	\$380,000.00
AUTHOR	Planning

REPORT

This matter is reported to Council's Local Planning Panel in accordance with the Panel's delegation from the New South Wales Minister for Planning, as the application seeks to vary a development standard by more than 10%. The development standard the applicant seeks to vary relates to the maximum permissible wall height for a detached secondary dwelling contained in Clause 4.3(2B)(a) of the Bankstown Local Environmental Plan 2015. The application proposes a maximum wall height of 3.49 metres, resulting in a 16.3% variation to the 3m maximum wall height standard.

The subject site at 9 Abel Street, Greenacre is dissected by 9B Abel Street, Greenacre. This parcel of land that traverses 9 Abel Street, Greenacre is classified as Community Land under the Local Government Act 1993 and is owned by Canterbury Bankstown Council. The abovementioned parcel diagonally divides 9 Abel Street, Greenacre into two parts from the north western corner of the site to the south eastern corner.

Development Application No. DA-25/2019 proposes the demolition of existing structures and construction of a single storey dwelling with basement parking and storage, front fence, in ground swimming pool to Part 1 of the lot and a detached secondary dwelling to the rear Part

2 of the lot. The secondary dwelling in question is located to the east of the principal dwelling, adjacent to 9B Abel Street, at the rear of the site.

The proposed principal dwelling contains four bedrooms, dining and living areas, a kitchen, basement parking and storage areas as well as a rear pool and associated alfresco, bbq, laundry and bathroom areas. The proposal also incorporates a one bedroom secondary dwelling to the rear with associated kitchen, living and bathroom areas.

DA-25/2019 has been assessed against State *Environmental Planning Policy (Affordable Rental Housing) 2009*, State *Environmental Planning Policy 55 – Remediation of Land*, State *Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004*, Bankstown Local Environmental Plan 2015 and Bankstown Development Control Plan 2015.

Council's assessment has identified departures from the provisions and controls within the various environmental planning instruments and policies. Accordingly, the application fails to comply with the *Bankstown Local Environmental Plan 2015 and Part B1 of the Bankstown Development Control Plan 2015*.

In summary, the primary issues relate to (but are not limited to) environmental impacts associated with stormwater management, insufficient amount of private open space, setbacks to the side boundaries and insufficient evidence that the owner of the land on which the development is to be carried out on consents to the application.

During the course of the assessment of this application Council has requested the applicant respond to the issues above. At the time of preparing this report, plans and detailed analysis relating to Council's deficiency letter relating to the issues mentioned above have not been adequately addressed.

The application was notified for a period of 14 days from 23 January 2019 to 6 February 2019. No submissions were received.

The application is recommended for refusal for the reasons outlined in Attachment B.

POLICY IMPACT

The recommendation of this report is that the Development Application be refused. Such a determination would not have any policy implications, as it would uphold the relevant planning and development controls. However, if a contrary decision is reached, this matter has direct policy implications as the proposed development is contrary to the EP&A Act and Regulation as the clause related to how an application must be made has not been satisfied, in addition to provisions in the Local Government Act 1993, the Bankstown Local Environmental Plan 2015 and the Bankstown Development Control Plan 2015.

FINANCIAL IMPACT

The recommendation of this report is that the Development Application be refused. Such a determination would not have any financial implications, as it would uphold the rights of the community classified land at 9B Abel Street, Greenacre. However, if a contrary decision is reached, the matter would have direct financial impacts to Canterbury Bankstown Council as

the landowner. The use of this land for services, construction, access and general recreation is strictly prohibited by Council and any use of this kind would directly affect the wider financial viability of this parcel of land.

RECOMMENDATION

It is recommended that Development Application DA-25/2019 be refused for the reasons outlined in Attachment B.

ATTACHMENTS

- A. Assessment Report
- B. Reasons for Refusal

DA-25/2019 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site at 9 Abel Street, Greenacre is irregular in shape and is directly apportioned by 9B Abel Street, Greenacre. This parcel of land that traverses 9 Abel Street, Greenacre is classified as Community Land under the Local Government Act 1993 and is owned by Canterbury Bankstown Council. The abovementioned parcel diagonally divides 9 Abel Street, Greenacre into two parts from the north western corner of the site to the south eastern corner. Part one (south western portion) is 394.3m² with part two being 96.9m², collectively making up a total land area of 491.2m². The site generally slopes to the rear and is zoned R2 Low Density Residential. Council's maps also note the site to be subject to medium risk flooding under the C18 2012 Flood Study.

At present, the site contains a single storey dwelling, detached rear outbuilding and an attached side carport. The surrounding development consists predominantly of low density residential dwellings of varying age and condition.

The context of the site is illustrated in the following aerial photos and maps.



Figure 1 – Subject site



Figure 2 - Wider Locality

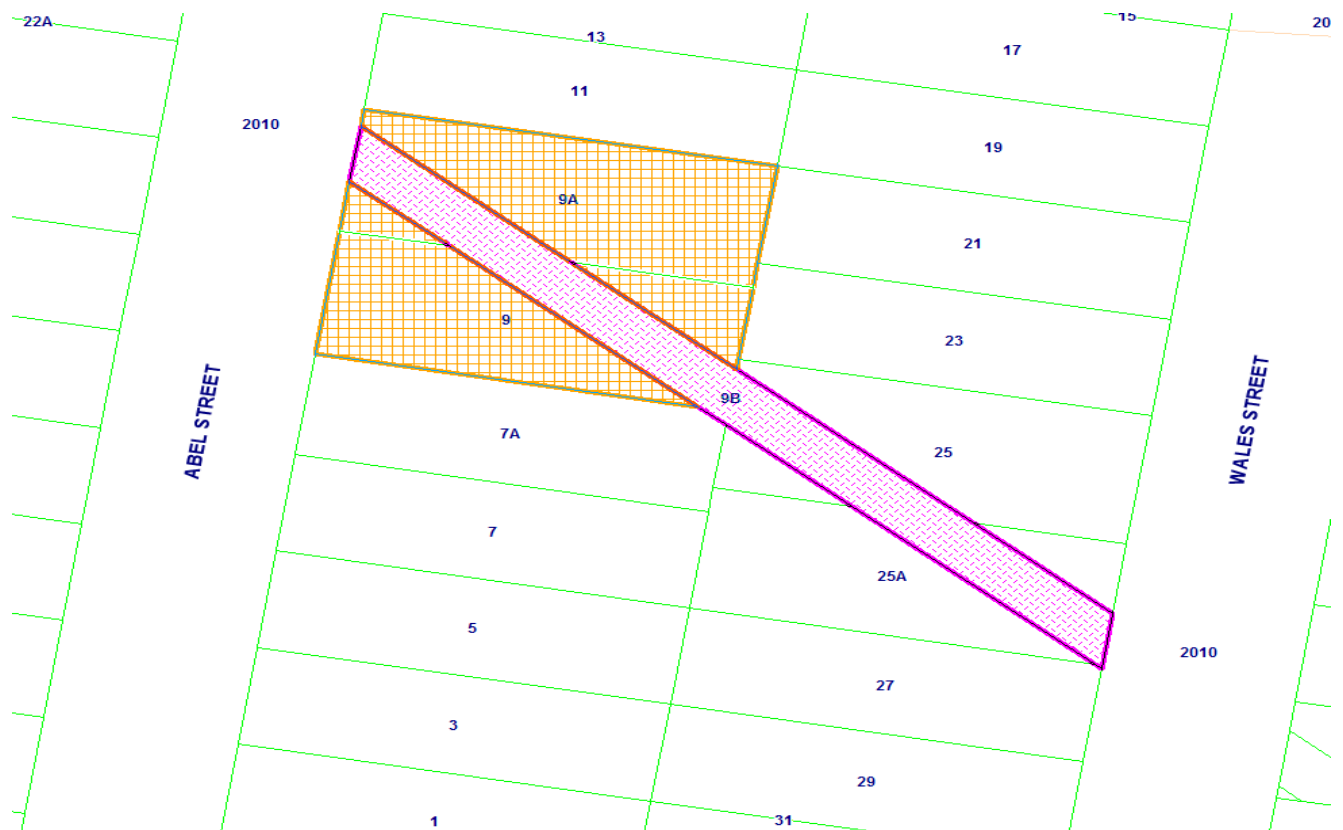


Figure 3 - Land ownership

PROPOSED DEVELOPMENT

DA-25/2019 proposes the demolition of all existing site structures (inclusive of the demolition of the outbuilding and carport on 9B Abel Street, Greenacre) and construction of a single storey dwelling with basement parking, storage and the like, front fence and swimming pool on part one of the site and detached secondary dwelling to the rear portion/part two of the site.

The proposal also incorporates associated landscaping, driveways and site works which would traverse 9B Abel Street, Greenacre.

SECTION 4.15 ASSESSMENT

The proposed development has been assessed pursuant to section 4.15 of the *Environmental Planning and Assessment Act, 1979*. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the proposed development.

Environmental planning instruments [section 4.15(1)(a)(i)]

State Environmental Planning Policy (Affordable Rental Housing) 2009

The provisions of Clause 22 of *State Environmental Planning Policy (Affordable Rental Housing) 2009* specifies that a consent authority must not consent to the carrying out of development for the purposes of a secondary dwelling unless:

- (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and*
- (b) the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.*

The SEPP also specifies that a consent authority must not refuse consent to development to which this Division applies on either of the following grounds:

- (a) site area if:*
 - a. the secondary dwelling is located within, or is attached to, the principal dwelling, or*
 - b. the site area is at least 450 square metres,*
- (b) parking - if no additional parking is to be provided on the site.*

An assessment of the development application has revealed that the proposal complies with the matters raised above. Parking is proposed to be provided by way of the basement parking immediately below the dwelling. It is noted that Council does not support the proposed basement for reasons associated with flooding as discussed elsewhere in this report.

The table below is provided to demonstrate the proposal's compliance with the numerical controls as set out in Clause 22 of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Number of dwellings	Two	Two	Yes
Total Floor Area	245.6m ² (491.2/2)	219.2m ² (182 + 37.2)	Yes
Floor Area of Secondary Dwelling	Max. 60m ²	37.2m ²	Yes

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of Clause 7(1) of *State Environmental Planning Policy No. 55 – Remediation of Land* specifies that a consent authority must not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The subject site has long been used for residential purposes. There is no evidence to suggest that the site is contaminated, nor is it considered necessary for any further investigation to be undertaken with regard to potential site contamination.

State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004

A valid BASIX Certificate accompanied the development application. The Certificate details the thermal, energy and water commitments with the location and associated labels referenced on submitted DA plans as required by the Certificate. The proposal satisfies the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

Bankstown Local Environmental Plan 2015

The following clauses of the Bankstown Local Environmental Plan 2015 were taken into consideration:

- Clause 1.2 – Aims of Plan
- Clause 2.1 – Land use zones
- Clause 2.2 – Zoning of land to which Plan applies
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition requires development consent
- Clause 4.3 – Height of buildings

Clause 4.4 – Floor space ratio

Clause 4.5 – Calculation of floor space ratio and site area

Clause 4.6 – Exceptions to development standards

Clause 5.4 – Controls relating to miscellaneous permissible uses

Clause 6.3 – Flood Planning

An assessment of the Development Application revealed that the proposal fails to comply with the provisions of *Bankstown Local Environmental Plan 2015* relating to Clause 1.2 Aims of Plan, Clause 2.3 Zone Objectives and Land Use Table, Clause 2.7 Demolition requires development consent, Clause 4.3 Height of Buildings, Clause 4.6 Exceptions to development standards and Clause 6.3 Flood Planning.

The table below is provided to demonstrate the proposals compliance with the numerical controls as set out in the BLEP 2015.

STANDARD		PERMITTED	PROPOSED	COMPLIANCE
Height of Buildings	Secondary Dwelling	Max 3m - wall Max 6m - building	3.49m (wall height) 4.4m (building height)	No – see comments below Yes
	Principal Dwelling	Max 7m – wall Max 9m - building	5.085m (wall height) 7.044m (building height)	Yes Yes
Floor space ratio (specific site)		Max. 0.50:1	A GFA of 219.2m ² is proposed resulting in a FSR of 0.446:1.	Yes
Floor area of secondary dwellings		Max 60m ²	37.2m ²	Yes

Clause 1.2 – Aims of the Plan

Council's assessment of the subject application has identified that the proposed development is inconsistent with the following aims contained in Clause 1.2(2) of BLEP 2015:

- (d) to provide development opportunities that are compatible with the prevailing suburban character and amenity of residential areas of Bankstown,*
- (i) to achieve good urban design in terms of site layouts, building form, streetscape, architectural roof features and public and private safety,.*
- (k) to consider the cumulative impact of development on the natural environment and waterways and on the capacity of infrastructure and the road network,*
- (l) to enhance the quality of life and the social well-being and amenity of the community.*

The proposal does not consider the functionality of the open space and site layout / building access. The development is not considered to be compatible with the prevailing suburban character and amenity and that envisaged for the residential environments of Bankstown.

Clause 2.7 – Demolition requires development consent

Clause 2.7 states the following:

The demolition of a building or work may be carried out only with development consent.

It is considered that compliance under this clause has not been demonstrated, as development consent for the demolition of the structures on 9B Abel Street, Greenacre has not been provided as part of this application.

Clause 4.3 – Height of Buildings

Clause 4.3(2B)(a) and Clause 4.3(2B)(b) – Height of buildings of the BLEP 2015 refers to the maximum permitted height of buildings for both dwelling and secondary dwelling developments in an R2 Low Density Residential Zone as secondary dwellings having a maximum building height of 6m and a maximum wall height of 3m and dwellings having a maximum building height of 9m and a maximum wall height of 7m. It reads as follows:

4.3 Height of buildings

(1) The objectives of this clause are as follows:

- (a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,*
- (b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,*
- (c) to provide appropriate height transitions between development, particularly at zone boundaries,*
- (d) to define focal points by way of nominating greater building heights in certain locations.*

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

(2A)...

(2B) Despite subclause (2), the following restrictions apply to development on land in Zone R2 Low Density Residential:

- a) for a secondary dwelling that is separate from the principal dwelling—the maximum building height is 6 metres and the maximum wall height is 3 metres,*
- b) for a dwelling house or a dual occupancy—the maximum wall height is 7 metres,*
- c) for multi dwelling housing and boarding houses:*
 - i) the maximum building height for a dwelling facing a road is 9 metres and the maximum wall height is 7 metres, and*
 - ii) the maximum building height for all other dwellings at the rear of the lot is 6 metres and the maximum wall height is 3 metres.*

...

The proposal seeks to vary Clause 4.3(2B)(a) of *Bankstown Local Environmental Plan 2015*. The maximum wall height for the secondary dwelling is measured at 3.49m (a 0.49m variation – 16.3%).

(2C) In this clause, wall height means the vertical distance between ground level (existing) and the underside of the eaves at the wall line or the top of the parapet or the flat roof (whichever is the highest).

Clause 4.6 – Exceptions to development standards

Clause 4.6 imposes three preconditions which must be satisfied to enable the proposed variation to the maximum wall height development standard. The preconditions are listed below:

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

The application seeks a variation to the wall height development standard under Clause 4.3(2B)(a) of the BLEP 2015. In order to assess whether the development standard should be varied, the following provisions of Clause 4.6 of the BLEP 2015 are relevant.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

No Clause 4.6 Variation request has been submitted as part of this Development Application. In the absence of a Clause 4.6 variation request a departure from the abovementioned development standard could not be considered for this application.

Clause 5.4 – Controls relating to miscellaneous permissible uses

Clause 5.4(9) of the BLEP 2015 reads as follows:

(9) If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

- (a) 60 square metres,*
- (b) 10% of the total floor area of the principal dwelling.*

An assessment of this development application has revealed that the proposal complies with Clause 5.4(9) as provided above as the total floor area for the secondary dwelling to the rear is measured at 37.2m², less than the maximum permissible total floor area.

Clause 6.3 – Flood Planning

The objectives of Clause 6.3 are to minimise the flood risk to life and property associated with the use of the land, to allow development on land that is compatible with the land's flood hazard taking into account projected changes as a result of climate change, and to avoid significant adverse impacts on flood behaviour and the environment.

Clause 6.3(3) of BLEP 2015 reads as follows:

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- a. is compatible with the flood hazard of the land, and*
- b. will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- c. incorporates appropriate measures to manage risk to life from flood, and*
- d. will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- e. is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

The subject site is affected by the Punchbowl C18 Flooding Study 2012, which incurs the 'Medium' flood affectation. The application included a Flood Risk Management Report which justifies the requirements of the Stormwater Systems Report issued by Council, notwithstanding the proposed basement which states "the proposed garage is below the 100 year flood level, however it is physically isolated from the overland flow". The context of the site's flooding affectation are illustrated in the following maps and also in the attached Stormwater Systems Report.

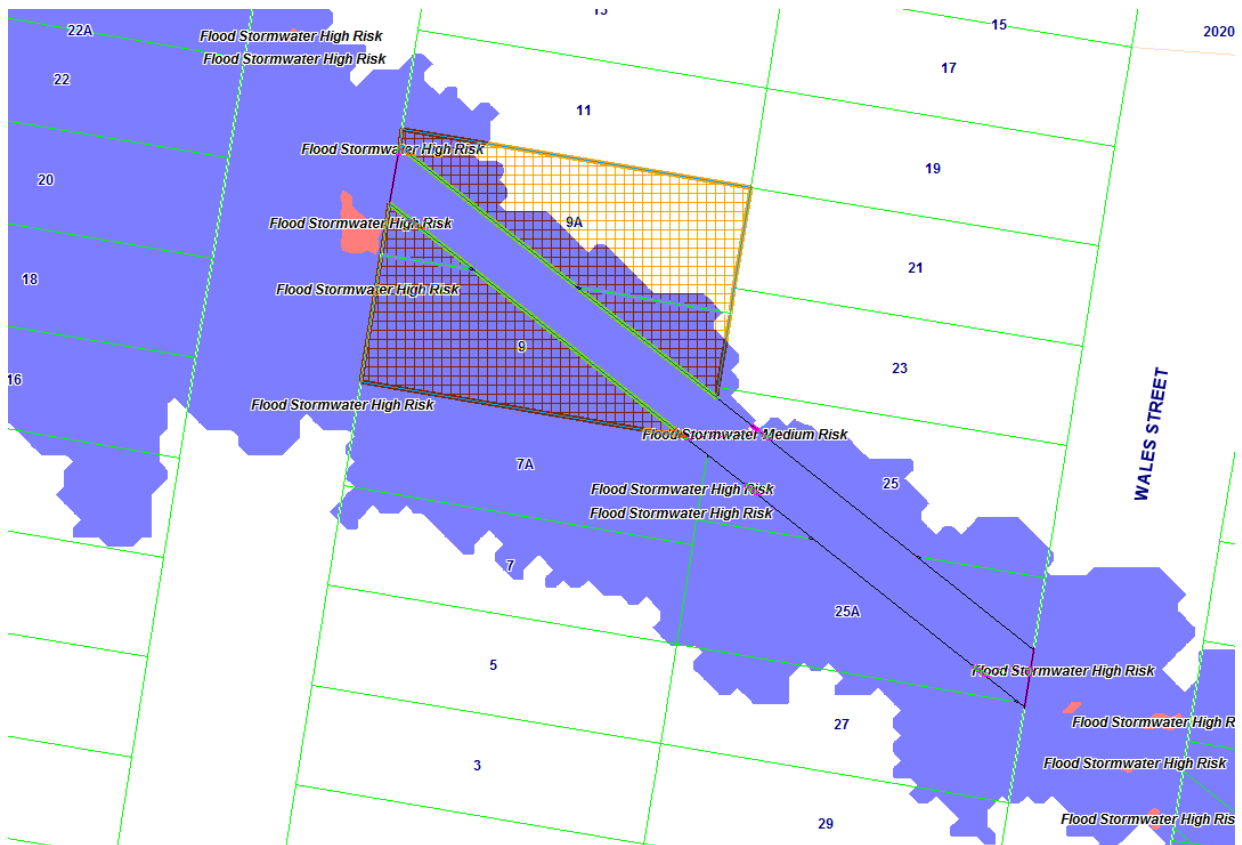


Figure 4 - Flooding affectation

Council's Stormwater Engineers provided comments regarding non-compliances relating to flooding, which outline significant issues associated with encroachments on Council's land, flooding of the basement garage due to the overland flow path, and the general design of the basement.

The applicant has not justified compliance with the abovementioned requirements of the Clause, nor provided written justification in their Statement of Environmental Effects. On this basis, it is considered that the proposed development fails to satisfy Clause 6.3 of BLEP 2015, particularly with respect to the development's compatibility with the land, impact on flood behaviour and unsustainable social and economic costs to the community as a consequence of flooding.

Draft environmental planning instruments [section 4.15(1)(a)(ii)]

There are no applicable draft environmental planning instruments.

Development control plans [section 4.15(1)(a)(iii)]

Section 2 of Part B1 of the BDCP 2015 contains the following objectives relating to dwellings:

- (a) ***To ensure lot sizes provide adequate space for dwellings, setbacks to adjoining residential land, landscaped areas, open space, driveways, vehicle manoeuvring areas and the like.***

- (b) *To ensure the building form, building design and landscaping of dwelling houses are compatible with the prevailing suburban character of the residential areas.*
- (c) *To ensure the building form and building design of dwelling houses provide appropriate amenity to residents in terms of private open space, access to sunlight and privacy.*
- (d) *To ensure the building form and building design of dwelling houses do not adversely impact on the amenity of neighbouring properties in terms of visual bulk, access to sunlight and privacy.*
- (e) *To ensure the building form of dwelling houses in the foreshore protection area preserves the existing topography, land and rock formations, and the unique ecology of natural bushland and mangrove areas.*
- (f) *To minimise the visual impact of off-street parking on the streetscape.*

Section 3 of Part B1 of the BDCP 2015 contains the following objectives relating to secondary dwellings:

- (a) *To ensure secondary dwellings are established in conjunction with the principal dwelling on the same allotment.*
- (b) *To ensure the building form and building design of secondary dwellings are compatible with the prevailing suburban character of the residential areas.*
- (c) *To ensure the building form and building design of secondary dwellings provide appropriate amenity to residents in terms of private open space, access to sunlight and privacy.*
- (d) *To ensure the building form and building design of secondary dwellings do not adversely impact on the amenity of neighbouring properties in terms of visual bulk, access to sunlight and privacy.*
- (e) *To ensure the building form of secondary dwellings in the foreshore protection area preserves the existing topography, land and rock formations, and the unique ecology of natural bushland and mangrove areas.*

Section 14 of Part B1 of the BDCP 2015 contains the following objectives relating to outdoor structures:

- (a) *To ensure outdoor structures are established in conjunction with the principal dwelling on the same allotment.*
- (b) *To ensure the building form and building design of outdoor structures are compatible with the prevailing suburban character of the residential areas.*
- (c) *To ensure the building form and building design of outdoor structures do not adversely impact on the amenity of neighbouring properties in terms of visual bulk and public health.*
- (d) *To ensure the building form of outdoor structures in the foreshore protection area preserves the existing topography, land and rock formations, and the unique ecology of natural bushland and mangrove areas.*

In order to assess the proposals compatibility with the objectives, an analysis of the proposals consistency with the applicable controls is necessary. The following table provides a summary

of the development application against the primary development controls contained within Part B1, Section 2, 3 & 14 of BDCP 2015.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
Clause 2.3	The storey limit for dwelling houses is 2 storeys.	The development application proposes a single storey dwelling, with the basement being excluded as a storey as the ground floor finished floor level is less than 1m above the natural ground level.
Clause 2.4	The siting of dwelling houses and landscaping works must be compatible with the existing slope and contours of the allotment and any adjoining property. Council does not allow any development that involves elevated platforms on columns; or excessive or unnecessary terracing, rock excavation, retaining walls or reclamation.	The proposal demonstrates compliance with this clause as it is compatible with the existing slope, with minimal fill presented as well as no elevated platforms or excessive excavation.
Clause 2.5	Any reconstituted ground level on the allotment must not exceed a height of 600mm above the ground level (existing) of an adjoining property except where: (a) the dwelling house is required to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or (b) the fill is contained within the ground floor perimeter of the dwelling house to a height no greater than 1 metre above the ground level (existing) of the allotment.	The proposal demonstrates compliance with this Clause with 865mm of fill above the NGL (at its highest point) in accordance with the requirements of the submitted Stormwater Systems Report and Part 12 of this DCP.
Clause 2.7	The minimum setback for a building wall to the primary road frontage is: (a) 5.5 metres for the first storey (i.e. the ground floor); and (b) 6.5 metres for the second storey.	5.5m N/A
Clause 2.9	For the portion of the building wall that has a wall height less than or equal to 7 metres, the minimum setback to the side boundary of the allotment is 0.9 metre.	The proposal fails this requirement as the dwelling depicts a zero setback to the Community Classified land at 9B Abel Street, Greenacre. The setback to the southern side boundary is 0.9m.
Clause 2.11	The basement level must not project beyond the ground floor perimeter of the dwelling house.	The proposal fails to demonstrate compliance with this clause with the basement projecting beyond the ground floor perimeter of the floor immediately above to the rear alfresco area and immediately adjacent the bathroom and ensuite bathroom to the northern side of the dwelling.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
Clause 2.12	Dwelling houses must provide a minimum 80m ² of private open space behind the front building line. This may be in the form of a single area or a sum of areas provided the minimum width of each area is 5 metres throughout.	The total private open space for the site is 0m ² which therefore causes a non-compliance with this clause in regard to the minimum requirements for private open space for the dwelling. It is noted that sections of the assessable open space to the rear do not meet the minimum required 5m x 5m dimension, alfresco areas are greater than 300mm above the natural ground level and calculations for private open space do not include land for which owner's consent has not been provided.
Clause 2.13	At least one living area must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Council may allow light wells and skylights to supplement this access to sunlight provided these building elements are not the primary source of sunlight to the living areas.	The proposal depicts a living area with northern and eastern windows which will receive the minimum requirement of direct sunlight to living areas.
Clause 2.14	At least one living area of a dwelling on an adjoining allotment must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Where this requirement cannot be met, the development must not result with additional overshadowing on the affected living areas of the dwelling.	It is considered that compliance is demonstrated with this Clause with adjoining dwellings maintaining the minimum 3 hours of sunlight to a living area at the mid-winter solstice.
Clause 2.15	A minimum 50% of the private open space required for the dwelling house and a minimum 50% of the private open space of a dwelling on an adjoining allotment must receive at least 3 hours of sunlight between 9.00am and 5.00pm at the equinox. Where this requirement cannot be met for a dwelling on an adjoining allotment, the development must not result with additional overshadowing on the affected private open space.	The proposal fails to demonstrate compliance with this clause as the application does not propose compliant private open space in accordance with Clause 2.12, Part B1 of the BDCP 2015, therefore the minimum solar access requirements to private open space cannot be achieved. Notwithstanding this, It is considered that compliance is demonstrated with reference to adjoining dwellings maintaining the minimum 3 hours of sunlight to at least 50% of their private open space at the equinox.
Clause 2.17	Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must: (a) offset the windows between dwellings to minimise overlooking; or	It is considered that compliance is demonstrated with this Clause as the proposed windows are offset from adjoining living area or bedroom windows on adjoining allotments.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
	<ul style="list-style-type: none"> (b) provide the window with a minimum sill height of 1.5 metres above floor level; or (c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres above floor level; or (d) use another form of screening to the satisfaction of Council. 	
Clause 2.18	<p>Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where:</p> <ul style="list-style-type: none"> (a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non-habitable room; or (b) the window has a minimum sill height of 1.5 metres above floor level; or (c) the window has translucent glazing to a minimum height of 1.5 metres above floor level; or (d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling. 	<p>It is considered that compliance is demonstrated with this Clause as the proposed windows are either to a bedroom, bathroom laundry or the like (as mentioned in Clause 2.18a) or considered to prevent overlooking of more than 50% of the private open space of an adjoining dwelling.</p>
Clause 2.21	The maximum roof pitch for dwelling houses is 35 degrees.	The roof pitch of the proposed dwelling measures at 29 degrees, demonstrating compliance with this clause.
Clause 2.26	<p>Development must locate the car parking spaces behind the front building line with at least one covered car parking space for weather protection. Despite this clause, Council may allow one car parking space to locate forward of the front building line provided:</p> <ul style="list-style-type: none"> (a) the car parking space forward of the front building line is uncovered and located in a stacked arrangement on the driveway in front of the covered car parking space; and (b) the covered car parking space is setback a minimum 6 metres from the primary and secondary frontages. 	<p>The proposal is considered to demonstrate compliance with this clause as the covered parking spaces within the basement are behind the front building line and maintain the minimum setback requirements.</p>

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
Clause 2.31	<p>Development must landscape the following areas on the allotment by way of trees and shrubs with preference given to native vegetation endemic to the City of Bankstown (refer to Appendix 4 and Appendix 5 for a list of suitable species):</p> <p>(a) a minimum 45% of the area between the dwelling house and the primary road frontage; and</p> <p>(b) a minimum 45% of the area between the dwelling house and the secondary road frontage; and</p> <p>(c) plant at least one 75 litre tree between the dwelling house and the primary road frontage (refer to Appendix 5 for a list of suitable trees in the City of Bankstown or Appendix 6 for allotments that adjoin the Hume Highway); and</p> <p>(d) for development in the foreshore protection area (refer to map in Appendix 1), plant native trees with a mature height greater than 12 metres adjacent to the waterbody.</p>	<p>45m² (landscaped area) / 86m² (area between the dwelling house and the primary road frontage) = 52%</p> <p>N/A</p> <p>75L Tree proposed on the landscape plan</p> <p>N/A</p>
Clause 3.1	The subdivision of secondary dwellings is prohibited.	No subdivision is proposed as part of this Development Application.
Clause 3.2	<p>Council must not consent to development for the purpose of secondary dwellings unless:</p> <p>(a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under an environmental planning instrument; and</p> <p>(b) the total floor area of the secondary dwelling is no more than 60m² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under an environmental planning instrument, that greater floor area.</p>	<p>The total floor area of the principal dwelling and secondary dwelling is considered to comply with this provision of this clause. The following calculations are provided:</p> <p>Maximum allowable Floor Area = 245.6m² (491.2/2)</p> <p>Total Floor Area = 219.2m² (182 + 37.2)</p> <p>The total floor area of the secondary dwelling is measured at 37.2m², deemed compliant with this clause.</p>
Clause 3.4	The storey limit for detached secondary dwellings is single storey and the maximum wall height is 3 metres.	The proposed secondary dwelling is single storey. However, the wall height exceeds the maximum height of 3m, measuring at 3.49m.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
Clause 3.5	The siting of secondary dwellings and landscaping works must be compatible with the existing slope and contours of the allotment and any adjoining property. Council does not allow any development that involves elevated platforms on columns; or excessive or unnecessary terracing, rock excavation, retaining walls or reclamation.	The proposal is considered to demonstrate compliance with this clause as it compatible with the existing slope, with minimal fill presented as well as no elevated platforms or excessive excavation.
Clause 3.6	Any reconstituted ground level on the allotment must not exceed a height of 600mm above the ground level (existing) of an adjoining property except where: (a) the secondary dwelling is required to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or (b) the fill is contained within the ground floor perimeter of the secondary dwelling to a height no greater than 1 metre above the ground level (existing) of the allotment.	The proposal demonstrates compliance with this Clause with 696mm of fill above the NGL (at it's highest point) due to the requirements of the Stormwater Systems Report for raised finished floor levels to comply in the event of a Flood.
Clause 3.8	The minimum setback for a building wall to the primary road frontage is: (a) 5.5 metres for the first storey (i.e. the ground floor); and (b) 6.5 metres for the second storey.	33m N/A
Clause 3.10	For the portion of the building wall that has a wall height less than or equal to 7 metres, the minimum setback to the side and rear boundaries of the allotment is 0.9 metre.	The proposal fails this requirement as the proposal depicts a zero setback to the Community Classified land at 9B Abel Street, Greenacre. The setback to the northern side boundary is 0.9m and 0.945m to the eastern side boundary.
Clause 3.12	Secondary dwellings must not result in the principal dwelling on the allotment having less than the required landscaped area and private open space.	The total private open space for the site is 0m ² which therefore causes a non-compliance with Clause 2.12, Part B1 of the BDCP 2015 in regard to the minimum requirements for private open space for the principal dwelling. It is noted that sections of the assessable open space to the rear do not meet the minimum required 5m x 5m dimension, alfresco areas are greater than 300mm above the natural ground level and calculations for private open space do not include land for which owner's consent has not been provided.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
Clause 3.13	At least one living area must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid–winter solstice. Council may allow light wells and skylights to supplement this access to sunlight provided these building elements are not the primary source of sunlight to the living areas.	The proposal depicts a living area with a northern and western window which will receive the minimum requirement of direct sunlight.
Clause 3.16	Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must: (a) offset the windows between dwellings to minimise overlooking; or (b) provide the window with a minimum sill height of 1.5 metres above floor level; or (c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres above floor level; or (d) use another form of screening to the satisfaction of Council.	It is considered that compliance is demonstrated with this Clause as the windows proposed to the northern elevation are considered to be significantly offset from windows on adjoining dwellings. The window to the southern elevation is considered to be offset to also prevent overlooking.
Clause 3.17	Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where: (a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non–habitable room; or (b) the window has a minimum sill height of 1.5 metres above floor level; or (c) the window has translucent glazing to a minimum height of 1.5 metres above floor level; or (d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower–level or adjoining dwelling.	It is considered that compliance is demonstrated with this Clause as the windows to the eastern / southern elevations are to bedrooms and bathrooms with the living area window considered to not overlook private open space of an adjoining dwelling.
Clause 3.23	The maximum roof pitch for detached secondary dwellings is 25 degrees. An attic or basement is not permitted as part of the dwelling.	The roof pitch of the proposed secondary dwelling measures at 18 degrees, demonstrating compliance with this clause.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
Clause 3.26	Secondary dwellings must not result in the principal dwelling on the allotment having less than the required car parking spaces.	The proposal incorporates basement parking which demonstrates compliance with the minimum requirements of this clause.
Clause 14.1	The maximum fence height for a front fence is 1.8 metres.	The proposed front fence complies with the requirements of this clause, with the front fence presenting a 500mm solid component therefore being less than the maximum prescribed height.
Clause 14.12	Swimming pools and spas must locate behind the front building line.	The proposed swimming pool is located behind the front building line, demonstrating compliance with this Clause.
Clause 14.13	The minimum setback between the waterline of swimming pools / spas and the allotment boundary is 1 metre.	The proposal fails to demonstrate compliance with this Clause as the swimming pool waterline is 0.3m from the allotment boundary adjoining 9B Abel Street, Greenacre. It is noted that the swimming pool waterline is setback 1.2m from the southern boundary.

As demonstrated in the table above, an assessment of the Development Application has revealed that the proposal fails to comply with Clause 2.9, 2.11, 2.12, 3.4, 3.10, 3.12 and 14.13 Part B1 of the BDCP 2015. Accordingly, the proposed development is considered to be contrary to the desired objectives contained in Section 2, 3 and 14 Part B1 of the BDCP 2015.

Planning agreements [section 4.15(1)(a)(iia)]

There are no planning agreements that apply to this application.

The regulations [section 4.15C(1)(a)(iv)]

The subject application is inconsistent with Clause 50(1) and Schedule 1, Part 1 of the *Environmental Planning and Assessment Regulation, 2000* as the development application does not contain sufficient information in regards to the Statement of Environmental Effects indicating - Schedule 1, Part 1, Clause 2(4):

- a) *the environmental impacts of the development,*
- b) *how the environmental impacts of the development have been identified,*
- c) *the steps to be taken to protect the environment or to lessen the expected harm to the environment,*

The likely impacts of the development [section 4.15C(1)(b)]

The likely impacts of the proposal have not been managed through the design of the development which demonstrates a number of non-compliances with Council's planning controls. Council's assessment of the application has identified several fundamental issues with the proposed development, which have been detailed in this report. In addition, it is noted that the adopted North East Local Area Plan (NELAP) included action G1 which identified this lot as suitable for divestment subject to reclassification of the land from community to operational land.

Council prepared a Planning Proposal to progress LEP amendments that would implement the land use changes identified in the NELAP and reported this to Council in June 2018. Council resolved at that meeting not to proceed with the Planning Proposal for the North East Local Area Plan.

The outcome of the above is that the community land status of the lot stands and is unlikely to change in the short term.

Suitability of the site [section 4.15C(1)(c)]

The development, as proposed is not considered to be an appropriate form of development on the subject site and represents a built form that is not compatible with the existing and desired future character of the locality. Based on the subdivision pattern, it is considered that the proposal fails to comply with the requirements of Community Classified land directly adjoining the site (9B Abel Street, Greenacre) in accordance with Chapter 6, Part 2 of the *Local Government Act 1993*. The development proposes variations, amongst other things, to the wall height, setback to the side boundary and it is considered that the built form proposed is representative of a general design that is unsympathetic to the site and locality to which it falls within. The proposal is not an acceptable form of development based on the applicable controls and objectives, and the site is therefore not considered to be suitable for the development that has been proposed.

Submissions [section 4.15C(1)(d)]

No submissions were received for or against the development.

The public interest [section 4.15C(1)(e)]

With regard to the relevant planning considerations, it is concluded that the proposed development would contravene the public interest. The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and development controls, and by the consent authority ensuring that any adverse impacts associated with the development are suitably addressed. The application undermines the integrity of the objectives and controls of Council's controls relating to this form of development, with particular reference to the overall amenity of the structure, general landscape and urban design. The application also undermines the integrity of the Community Classified land for which it adjoins, with strict prohibitions relating to demolition, development on this parcel of land, installation of services and the like for the secondary dwelling (traversing this parcel), associated overhangs, pedestrian and vehicular access for the purposes of construction.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, and the relevant planning controls.

The proposed development is not considered to be satisfactory in accordance with the applicable environmental planning instruments and development controls. Council's assessment has identified extensive issues associated with the proposed development and the information accompanying the application.

On this basis, it is recommended that the proposed development be refused in light of the justifications presented in this report.

RECOMMENDATION

It is recommended that the development application DA-25/2019 be refused, for the reasons contained in Attachment B.

REASONS FOR REFUSAL

1. The proposed development fails to satisfy Clause 1.2(2)(d) and Clause 1.2(2)(i) of the *Bankstown Local Environmental Plan 2015*. The submitted plans do not demonstrate the provision of an acceptable development outcome having regard to the adjoining prevailing suburban character, nor do they achieve good urban design in terms of site layout and building form. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*];
2. The proposed development fails to comply with Clause 4.3(2B)(a) of *Bankstown Local Environmental Plan 2015* in regards to the maximum wall height of the secondary dwelling. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning & Assessment Act, 1979*];
3. The proposed development fails to comply with Clause 2.9, Part B1 – Residential Development of *Bankstown Development Control Plan 2015* in regards to the required setbacks. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act, 1979*];
4. The proposed development fails to comply with Clause 2.11, Part B1 – Residential Development of *Bankstown Development Control Plan 2015* in regards to basement projecting beyond the ground floor perimeter of the dwelling house. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act, 1979*];
5. The proposed development fails to comply with Clause 2.12, Part B1 – Residential Development of *Bankstown Development Control Plan 2015* in regards to the minimum requirements for private open space within the boundaries of the subject site. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act, 1979*];
6. The proposed development fails to comply with Clause 3.4, Part B1 – Residential Development of *Bankstown Development Control Plan 2015* in regards to maximum wall height of the secondary dwelling. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act, 1979*];
7. The proposed development fails to comply with Clause 3.10, Part B1 – Residential Development of *Bankstown Development Control Plan 2015* in regards to the required setbacks. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act, 1979*];
8. The proposed development fails to comply with Clause 3.12, Part B1 – Residential Development of *Bankstown Development Control Plan 2015* in regards to the minimum requirements for Private Open Space. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act, 1979*];
9. The proposed development fails to comply with Clause 14.13, Part B1 – Residential Development of *Bankstown Development Control Plan 2015* in regards to the minimum

setback requirements for pools to the allotment boundary. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act, 1979*];

10. The application fails to provide an accurate address, and formal particulars of title, of the land on which the development is to be carried out (i.e. 9A Abel Street, Greenacre). [Pursuant to Section 50(1)(a) and Schedule 1, Part 1, 1(1)(c) of the *Environmental Planning and Assessment Regulation, 2000* and Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act, 1979*].
11. The application fails to provide evidence that the owner of the land on which the development is to be carried out consents to the application (i.e. Canterbury Bankstown Council). [Pursuant to Section 50(1)(a) and Schedule 1, Part 1, 1(1)(i) of the *Environmental Planning and Assessment Regulation, 2000* and Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act, 1979*].
12. The application fails to provide an accurate estimated cost of the development, based on a Quantity Surveyor's Report prepared by a qualified and registered Quantity Surveyor. [Pursuant to Section 50(1)(a) and Schedule 1, Part 1, 1(1)(h) of the *Environmental Planning and Assessment Regulation, 2000* and Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act, 1979*].
13. The application fails to demonstrate an acceptable level of impact to the locality [Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*];
14. The site is not considered suitable for the proposed development due to the reasons outlined above, and also due to the proposed finished floor level of the basement (in accordance with the Stormwater System Report), restrictions on vehicle manoeuvrability within the basement and encroachments of the building structures within Council's drainage reserve / land. [Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act, 1979*];
15. For the reasons stated above, it is considered that the development is not in the public interest. [Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act, 1979*].

Canterbury Bankstown Local Planning Panel - 6 May 2019

ITEM 2	10 Carysfield Road, Georges Hall
	Construction of a small metal clad storage shed (with awning)
FILE	DA-153/2019 – Bass Hill Ward
ZONING	RE1 Public Recreation
DATE OF LODGEMENT	27 March 2019
APPLICANT	Bankstown Sports Strikers FC
OWNERS	Canterbury Bankstown Council
ESTIMATED VALUE	\$39,000
AUTHOR	City Development

SUMMARY REPORT

This matter is reported to the Canterbury Bankstown Local Planning Panel as the site in which the development application relates is owned by Canterbury Bankstown Council.

Development Application No. DA-153/2019 proposes the construction of a small metal clad storage shed (with awning) at No 10 Carysfield Road, Georges Hall.

The proposal has been assessed against the matters for consideration contained in Section 4.15 of the Environmental Planning and Assessment Act 1979, which included, amongst other things, an assessment against *State Environmental Planning Policy No 55 – Remediation of Land*, *Bankstown Local Environmental Plan 2015*, the *Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment* and *Bankstown Development Control Plan 2015*. The assessment identified no non compliances with the controls contained within the above mentioned planning legislation.

Having regard to the provisions contained in the '*Introduction and List of Amendments*' to the Bankstown Development Control Plan 2015, the development application was not required to be neighbour notified nor advertised.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that the application be approved subject to the conditions included in 'Attachment B'.

ATTACHMENTS

- A. Assessment Report
- B. Conditions of Consent

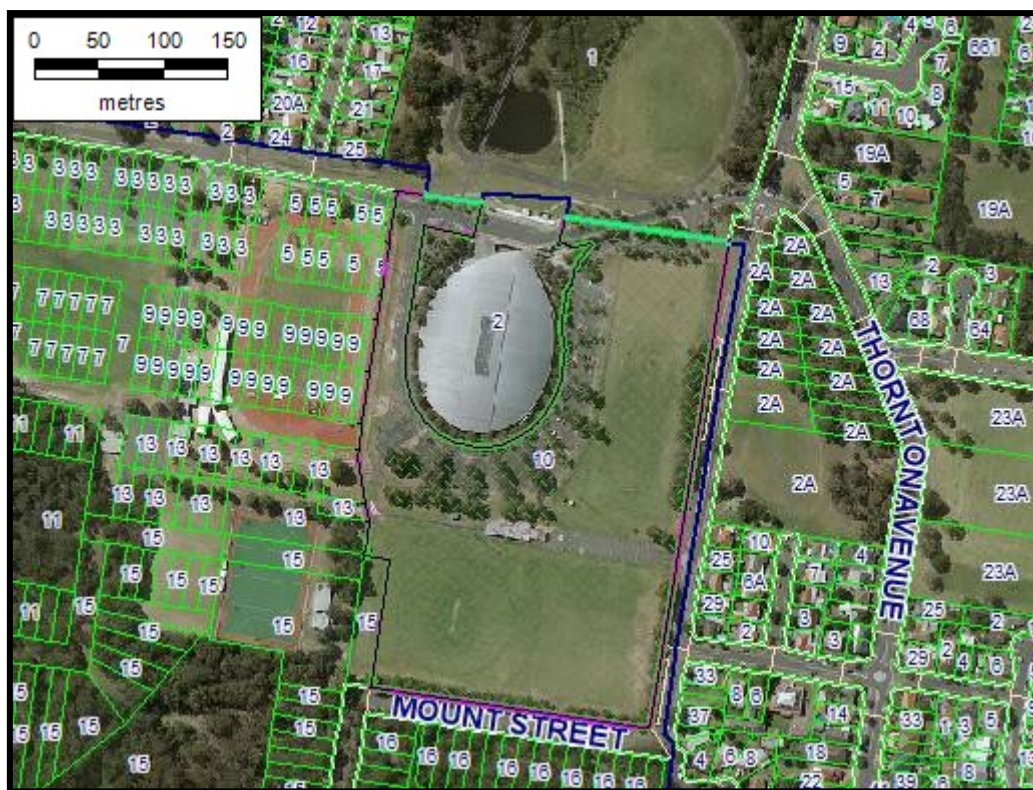
DA-153/2019 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

The subject site is known as 10 Carysfield Road, Georges Hall. The site essentially comprises a series of playing fields, associated at grade car parking areas, an amenities block and associated storage areas. The site, in association with those that adjoin, provide for a range of multi-recreational sporting facilities, the most recognisable being that of the Dunc Gray Velodrome.

Sites along the eastern side of Carysfield Road are zoned R2 Low Density Residential with the nearest resident (at No 25 Carysfield Road) situated approximately 170 metres from where the shed is to be constructed on the site. Land to the north, west and south are used for various recreational purposes.

The aerial photo below identifies the site and the siting of developments on the adjoining and nearby sites.



PROPOSED DEVELOPMENT

The applicant is seeking approval to construct a small metal clad storage shed with awning to be sited approximately 4 metres west of the existing amenities block that currently occupies the site. The dimensions of the shed are 7 metres long x 5 metres wide while the awning is 7 metres wide by 2.7 metres deep.

SECTION 4.15 ASSESSMENT

The proposed development has been assessed pursuant to Section 4.15 of the *Environmental Planning and Assessment Act, 1979*. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the proposed development.

Environmental planning instruments [section 4.15(1)(a)(i)]

State Environmental Planning Policy No 55 – Remediation of Land

The provisions of Clause 7 of *State Environmental Planning Policy No 55 – Remediation of Land* specifies that a consent authority must not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

No historical evidence exists to suggest that the site was previously occupied by an activity or a land use that would cause it to be contaminated. As such it is not considered necessary for any further investigation to be undertaken with regard to potential site contamination. The subject site is considered suitable for the proposed development pursuant to the provisions of SEPP 55.

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

The site is located within land identified as being affected by *Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment*, being a deemed SEPP from 1 July 2009 under the then Clause 120 of Schedule 6 of the EP&A Act 1979. The GMREP No. 2 contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications.

An assessment of the proposal indicates that it is consistent with the general aims and objectives of the plan and there is no inconsistency with the planning principles as set out in Clause 8 of GMREP No. 2.

Bankstown Local Environmental Plan 2015

The following clauses of the *Bankstown Local Environmental Plan 2015* (BLEP) were taken into consideration:

Clause 1.2 – Aims of Plan

Clause 2.1 – Land use zones

Clause 2.2 – Zoning of land to which Plan applies

Clause 2.3 – Zone objectives and Land Use Table

Clause 6.2 – Earthworks

The site is zoned 'RE1 Public Recreation' under the BLEP and is classified as 'Community Land' in accordance with the Local Government Act 1993. A 'recreation area' is permissible with the consent of Council in a 'RE1 Public Recreation' zone.

'Recreation area' is defined as follows;

recreation area means a place used for outdoor recreation that is normally open to the public, and includes:

- (a) a children's playground, or
- (b) an area used for community sporting activities, or
- (c) a public park, reserve or garden or the like,

and any ancillary buildings but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).

The storage shed is deemed an 'ancillary building' as referred to above.

The site is not subject to any building height or floor space ratio controls.

An assessment of the development application revealed that the proposal complies with the matters raised in each of the above clauses of *Bankstown Local Environmental Plan 2015*.

Draft environmental planning instruments [section 4.15(1)(a)(ii)]

There are no draft environmental planning instruments applicable.

Development control plans [section 4.15(1)(a)(iii)]

Bankstown Development Control Plan 2015 (Part B11 Tree Management Order)

While a stand of trees are situated in the vicinity of the proposed storage shed, the shed is sited clear of the tree root zones and does not require the lopping or removal of any branches.

Planning agreements [section 4.15(1)(a)(iia)]

A planning agreement has not been entered into under section 7.4 of the Environmental Planning and Assessment Act 1979 nor has the applicant offered to enter into a draft planning agreement.

The regulations [section 4.15(1)(a)(iv)]

The development remains consistent with the provisions contained in the Environmental Planning and Assessment Regulation 2000.

The likely impacts of the development [section 4.15(1)(b)]

The development will not have an impact on the locality for the following reasons;

- The shed is to be located approximately 170 metres from the nearest resident in Carysfield Road.
- Located behind an existing amenities block, the shed will not be visible to the residents of Carysfield Road.
- The shed is to be situated clear of existing stands of vegetation.
- The shed is only 35m² in area and having regard to the size of the playing fields will not dominate the environment.

Suitability of the site [section 4.15(1)(c)]

The site is considered to be suitable to accommodate a storage shed that is used in association with the adjacent playing fields.

Submissions [section 4.15(1)(d)]

Having regard to the provisions contained in the '*Introduction and List of Amendments*' to the Bankstown Development Control Plan 2015, the development application was not required to be neighbour notified nor advertised hence no public submissions have been received.

Furthermore given the nature and scale of the development, the application was not required to be externally referred.

The public interest [section 4.15(1)(e)]

The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and by the consent authority ensuring that any adverse impacts on the surrounding area and the environment are avoided. This has been achieved in this instance hence approval of the development is considered to be in the public interest.

CONCLUSION

The development application has been assessed against the matters for consideration contained in Section 4.15 of the Environmental Planning and Assessment Act 1979, which included, amongst other things, an assessment against *State Environmental Planning Policy No 55 – Remediation of Land*, *Bankstown Local Environmental Plan 2015*, *Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment* and the *Bankstown Development Control Plan 2015*. The assessment

identified no non compliances with the controls contained within the above mentioned planning legislation.

RECOMMENDATION

It is recommended that the application be approved subject to the attached conditions.

CONDITIONS OF CONSENT

- 1) The proposal shall comply with the conditions of Development Consent. A Construction Certificate shall not be issued until the plans and specifications meet the required technical standards and the conditions of this Development Consent are satisfied.
- 2) Development shall take place in accordance with Development Application No. DA-153/2019, submitted by Bankstown Sports Strikers FC, accompanied by Drawing No SS19.035.1, Pages 2 of 4, 3 of 4 and 4 of 4 (all Issue A), prepared by Straightline Studios, dated 11 March 2019 and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

Prior to the release of a Construction Certificate the following conditions MUST be satisfied and nominated fees/contributions/bonds paid:

- 3) The Certifying Authority must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 4) A soil erosion and sediment control plan must be prepared by a suitably qualified professional, in accordance with the Bankstown Demolition and Construction Guidelines and Council's Development Engineering Standards, and submitted to the certifying authority for approval prior to the issue of a construction certificate.
- 5) A Construction Certificate shall not be issued until written proof that all bonds, fees and/or contributions as required by this consent have been paid to the applicable authority.
- 6) A long service levy payment which is 0.35% of the total cost of the work is to be paid to the Building and Construction Industry Long Service Payments Corporation.
- 7) As any works within, or use of, the footway or public road for construction purposes requires separate Council approval under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993, Council requires that prior to any Construction Certificate for this development being issued, evidence of lodgement of an application for a Works Permit and or a Roadway/Footpath Building Occupation Permit shall be obtained where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

- a) Dig up, disturb, or clear the surface of a public footway or public road,
- b) Remove or interfere with a structure or tree (or any other vegetation) on a public footway or public road,
- c) Connect a road (whether public or private) to a classified road,
- d) Undertake footway, paving, vehicular crossing (driveway), landscaping or stormwater drainage works within a public footway or public road,
- e) Install utilities in, under or over a public road,
- f) Pump water into a public footway or public road from any land adjoining the public road,
- g) Erect a structure or carry out a work in, on or over a public road
- h) Require a work zone on the public road for the unloading and or loading of vehicles
- i) Pump concrete from within a public road,
- j) Stand a mobile crane within a public road
- k) Store waste and recycling containers, skips, bins and/or building materials on any part of the public road.
- l) The work is greater than \$25,000.
- m) Demolition is proposed.
- n) Subdivision is proposed.
- o) A Swimming pool is proposed.

Assessment of Works Permits (a to e) includes the preparation of footway design levels, vehicular crossing plans, dilapidation reports and issue of a Road Opening Permit.

All proposed works within the public road and footway shall be constructed under the supervision and to the satisfaction of Council. The applicant/developer shall arrange for necessary inspections by Council whilst the work is in progress.

For commercial or multi-unit residential developments within the designated CBD or an urban village area, footway design and construction and street tree supply, installation and tree hole detailing shall be as per the Council master plan for that area. Full width footways are to be supplied and installed at full cost to the developer to specification as supplied by Council. Layout plan of pavement to be submitted to Council for approval prior to the issue of the Works Permit.

All Council fees applicable, minimum restoration charges and inspection fees shall be paid prior to the assessment of the Work Permit in accordance with Council's adopted fees and charges. Note: Additional fees after approval will be charged where the Work Permit requires occupation of the Road or Footpath ie Hoardings, Work Zones etc.

In determining a Works Permit, Council can impose conditions and require inspections by Council Officers.

Forms can be obtained from Council's Customer Service counter located on the ground floor of Council's administration building at 66 - 72 Rickard Road, Bankstown or Council's website www.cbcity.nsw.gov.au

Part of any approval will require the person or company carrying out the work to carry public liability insurance to a minimum value of ten million dollars. Proof of the policy is to be provided to Council prior to commencing any work approved by the Work Permit including the Road Opening Permit and must remain valid for the duration of the works.

The commencement of any works on public land, including the footway or public road, may incur an on the spot fine of not less than \$1100 per day that work continues without a Works Permit and/or a Roadway/Footpath Building Occupation Permit.

All conditions attached to the permit shall be strictly complied with prior to occupation of the development. Works non-conforming to Council's specification (includes quality of workmanship to Council's satisfaction) shall be rectified by the Council at the applicant's expense.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION

- 8) The building / subdivision work in accordance with the development consent must not be commenced until:
 - a. a construction certificate for the building / subdivision work has been issued by the council or an accredited certifier, and
 - b. the person having benefit of the development consent has:
 - i. appointed a principal certifying authority for the building / subdivision work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - c. the person having the benefit of the development consent, if not carrying out the building work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and

- ii. notified the principal certifying authority of any such appointment, and
 - iii. unless the person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - d. the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the building / subdivision work.
- 9) Existing trees within the vicinity of the construction works or paths of travel for construction vehicles accessing the development that are to be retained shall be protected with temporary fencing of a style non injurious to tree roots, placed 2m from the trunk base of the existing tree to prevent damage during construction, and retained in accordance with Council's Tree Preservation Order. There is to be no stockpiling of materials within the 2m fenced zone.
- 10) Suitable erosion and sediment control measures shall be erected in accordance with the plans accompanying the Construction Certificate prior to the commencement of construction works and shall be maintained at all times.
- 11) Council warning sign for Soil and Water Management must be displayed on the most prominent point of the site, visible to both the street and site works. The sign must be displayed throughout the construction period.
- 12) Prior to the commencement of work, the applicant must provide a temporary on-site toilet if access to existing toilets on site is not adequate.
- 13) Prior to the commencement of work, a fence must be erected around the area of the works, except where an existing 1.8m high boundary fence is in good condition and is capable of securing the area. Any new fencing shall be temporary (such as cyclone wire) and at least 1.8m high. All fencing is to be maintained for the duration of construction to ensure that the work area is secured.

Where the work is located within 3.6m of a public place then a Type A or Type B hoarding must be constructed appropriate to the works proposed. An application for a Work Permit for such hoarding must be submitted to Council for approval prior to the commencement of work.

- 14) A sign shall be displayed on the site indicating the name of the person responsible for the site and a telephone number of which that person can be contacted during and outside normal working hours or when the site is unattended.

- 15) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- a. showing the name, address and telephone number of the principal certifying authority for the work, and
 - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c. stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- 16) The hours of site works shall be limited to between 7.00am and 6.00pm on weekdays and 7.00am and 1.00pm on Saturdays. No work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.
- 17) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 18) Prior to the commencement of work, the builder shall prepare a photographic record of the road reserve which clearly shows its condition prior to works occurring on site. For the entirety of demolition, subdivision or construction works, there shall be no stockpiling of building spoil, materials, or storage of equipment on the public road, including the footway and the road reserve shall be maintained in a safe condition at all times. No work shall be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 19) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 20) A final Occupation Certificate shall not be issued until all conditions relating to demolition, construction and site works of this development consent are satisfied and Council has issued a Work Permit Compliance Certificate.

Canterbury Bankstown Local Planning Panel - 6 May 2019

ITEM 3	2A Foley Street, Georges Hall
	Alterations and additions to an existing single storey dwelling with the partial demolition of the roof, addition of the first floor and associated external finishes
FILE	DA-867/2018 – Bass Hill
ZONING	R2 Low Density Residential
DATE OF LODGEMENT	19 November 2018
APPLICANT	Ridge Designs
OWNERS	Mr Haitham Faraj and Mrs Kamli Hamka
ESTIMATED VALUE	\$255,200.00
AUTHOR	Planning

REPORT

This matter is reported to Council's Local Planning Panel, in accordance with the Panel's delegation from the New South Wales Minister for Planning, as the application seeks to vary a development standard by more than 10%. The development standard the application seeks to vary relates to the maximum permissible wall height as contained in Clause 4.3(2B)(b) of the Bankstown Local Environmental Plan 2015. The application proposes a maximum wall height of 7.9 metres, resulting in a 12.8% variation to the development standard.

Development Application No. DA-867/2018 proposes alterations and additions to an existing single storey dwelling with the partial demolition of the roof, addition of the first floor and associated external finishes. The dwelling contains five bedrooms, dining and living areas, a kitchen, parking and storage areas as well as associated balconies, laundry and bathrooms.

As detailed in this report, the proposed non-compliances with the maximum wall height, as well as proposed variations to the second storey setback to the primary road frontage are justified and are considered worthy of support.

The application was notified for a period of 14 days from 20 November 2018 to 4 December 2018. No submissions were received.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that the application be approved subject to the conditions included in Attachment 'B'.

ATTACHMENTS

- A. Assessment Report
- B. Conditions of Consent

DA-867/2018 ASSESSMENT REPORT

SITE & LOCALITY DESCRIPTION

DA-867/2018 seeks consent for the alterations and additions to the dwelling located at 2A Foley Street, Georges Hall. The site contains a single storey dwelling and attached alfresco. The site being a corner site, generally slopes from north to south, has an area of 558.7m² and is zoned R2 Low Density Residential. The surrounding development consists predominantly of low density residential dwellings of varying age and condition.

It is also noted that the subject site falls within the 7.62m maximum building height zone in accordance with the Civil Aviation Regulation 1988 (Schedule 5). Concurrence to exceed the prescribed building height was sent to Council from Sydney Metro Airports (Bankstown Airport) on 28 February 2019.

The context of the site is illustrated in the following aerial photos and maps.



Figure 1 - Subject site



Figure 2 - Wider locality

PROPOSED DEVELOPMENT

DA-867/2018 proposes the partial demolition of the roof and alterations and additions to the single storey dwelling for a two storey dwelling with associated site works and finishes.

SECTION 4.15 ASSESSMENT

The proposed development has been assessed pursuant to section 4.15 of the *Environmental Planning and Assessment Act, 1979*. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the proposed development.

Environmental planning instruments [section 4.15(1)(a)(i)]

Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment

The site is located within land identified as being affected by *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*, being a deemed SEPP under Clause 120 of Schedule 6 of the *EP&A Act, 1979*. The GMREP contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications. An assessment of the proposal indicates that the development is generally consistent with the aims and objectives of the plan, as well as the planning principles as set out in Clause 8 of the GMREP.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of Clause 7(1) of *State Environmental Planning Policy No. 55 – Remediation of Land* specifies that a consent authority must not consent to the carrying out of any development on land unless:

(a) *it has considered whether the land is contaminated, and*

- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The subject site has long been used for residential purposes. There is no evidence to suggest that the site is contaminated, nor is it considered necessary for any further investigation to be undertaken with regard to potential site contamination.

State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004

A valid BASIX Certificate accompanied the development application. The Certificate details the thermal, energy and water commitments with the location and associated labels referenced on submitted DA plans as required by the Certificate. The proposal satisfies the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

Bankstown Local Environmental Plan 2015

The following clauses of the Bankstown Local Environmental Plan 2015 were taken into consideration:

- Clause 1.2 – Aims of Plan
- Clause 2.1 – Land use zones
- Clause 2.2 – Zoning of land to which Plan applies
- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition requires development consent
- Clause 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio
- Clause 4.5 – Calculation of floor space ratio and site area
- Clause 4.6 – Exceptions to development standards

An assessment of the development application has revealed that the proposal complies with the matters raised in each of the above clauses of Bankstown Local Environmental Plan 2015, with the exception of a variation proposed to Clause 4.3 Height of buildings (wall height).

The table below is provided to demonstrate the proposals compliance with the numerical controls as set out in the BLEP 2015.

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Height of Buildings	Max 7m - wall Max 9m (7.62m Sydney Metro Airports) - building	7.9m (wall height) 8.1m (building height)	No – see comments below Yes

Floor space ratio (specific site)	Max. 0.50:1	A GFA of 284m ² is proposed resulting in a FSR of 0.50:1.	Yes
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Clause 4.3 – Height of Buildings

Clause 4.3(2B)(b) – Height of buildings of the BLEP 2015 refers to the maximum permitted height of buildings for dwelling developments in an R2 Low Density Residential Zone as having a maximum building height of 9m and a maximum wall height of 7m. It reads as follows:

4.3 Height of buildings

(1) *The objectives of this clause are as follows:*

- (a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,*
- (b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,*
- (c) to provide appropriate height transitions between development, particularly at zone boundaries,*
- (d) to define focal points by way of nominating greater building heights in certain locations.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

(2A)...

(2B) *Despite subclause (2), the following restrictions apply to development on land in Zone R2 Low Density Residential:*

- a) for a secondary dwelling that is separate from the principal dwelling—the maximum building height is 6 metres and the maximum wall height is 3 metres,*
- b) for a dwelling house or a dual occupancy—the maximum wall height is 7 metres,***
- c) for multi dwelling housing and boarding houses:*
 - i) the maximum building height for a dwelling facing a road is 9 metres and the maximum wall height is 7 metres, and*
 - ii) the maximum building height for all other dwellings at the rear of the lot is 6 metres and the maximum wall height is 3 metres.*

...

The proposal seeks to vary Clause 4.3(2B)(b) of the *Bankstown Local Environmental Plan 2015*. The wall height for the dwelling is measured at 7.9m (0.9m variation – 12.8%).

In response to the non-compliance with Clause 4.3 the applicant has prepared and submitted a Clause 4.6 submission for Council's consideration. An assessment of the Clause 4.6 submission is provided below.

Clause 4.6 – Exceptions to development standards**(1) The objectives of this clause are as follows:**

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,**
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**

The aim of Clause 4.6 is to provide an appropriate degree of flexibility in applying development standards to achieve better development outcomes. Extracts from the applicant's submission are provided below:

It is considered that the provision of an appropriate degree of flexibility in applying the building height development standard is warranted in this instance for the following reasons:

- The proposal is generally compliant with the requirements and controls of Bankstown LEP 2015 and Bankstown DCP 2015. The wall height noncompliance relates to the staircase wall which measures 7.528m which exceeds the maximum wall height by 528mm. The proposal complies with the front and side setbacks and has no impact on the adjoining properties in terms of privacy, amenity and shadow impacts.*
- The proposed variation will not detract from the streetscape of Foley Street and will not add to the bulk and scale of the building.*
- The proposal is typical of the desired future character of the site and other similar development as established through the land use zoning under Bankstown LEP 2015.*
- The proposed height of 7.528m is minor variation to the maximum 7m permitted by Clause 4.3(2B)(b) of BLEP 2015. The proposed variation does not compromise the internal amenity of the development. Although the proposal departs from the numerical standard, the proposal satisfies the objectives of the standard and hence there is scope on merit grounds in permitting the numerical departure. By applying a degree of flexibility to the height standard, this will achieve a better outcome for the site.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Clause 4.3(2B)(b) prescribes the maximum permissible wall height for dwelling developments on the subject site.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and***
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

An extract of the applicant's Clause 4.6 submission has been reproduced above, as have the objectives for the maximum wall and building height controls as contained in Clause 4.3 of the BLEP 2015.

In addressing the proposed variations to the wall height, consideration must be given primarily to whether the built form is consistent with objective (a) of the control.

The building controls applicable to this site under the BLEP 2015 and BDCP 2015 provide the framework that regulates the overall built form outcome expected on site. The LEP controls the site by the application of a minimum lot size as well as height restrictions and floor space ratio controls. The DCP goes further and identifies minimum setbacks, private open space, parking, visual privacy and solar access which contribute to the overall built form and achievement of the character expected in a locality.

The relevant objectives of the R2 Low Density Residential zone are to *"provide for the housing needs of the community within a low density residential environment"*... whilst *"To allow for the development of low density housing that has regard to local amenity"* and ensuring *"landscape as a key characteristic in the low density residential environment"*.

It is considered that the proposal is consistent with the objectives of the R2 zone, in that the proposal provides a low density residential development of a built form that is consistent with what was originally constructed on the site.

The wall height of the proposed dwelling measures at 7.9m, causing a non-compliance of 0.9m above the maximum allowable wall height of 7m. The non-compliance arises due to the nature of the flat roof form and existing building fill found on the eastern elevation.

It is considered that enforcing compliance with the abovementioned clause in relation to wall height would be unreasonable due to the considerable fall / slope of the land.

As such, it is considered that there are sufficient environmental planning grounds to justify a contravention to the development standard, given the proposed development does not result in any significant changes to the original built form.

Given the nature of the non-compliance, the development's consistency with all other relevant requirements under BLEP 2015 and on the basis of the applicant's submission, it is considered that compliance with the standard is unnecessary in this instance and that there are sufficient environmental planning grounds to support the variation.

- (4) Development consent must not be granted for development that contravenes a development standard unless:***

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

On the basis of the applicant's submission, it is considered that compliance with the standard is unnecessary in this instance and that the proposed development is within the public interest. Therefore, it is considered that there is sufficient environmental planning grounds to support a variation in accordance with the above criteria.

Draft environmental planning instruments [section 4.15C(1)(a)(ii)]

There are no applicable draft environmental planning instruments.

Development control plans [section 4.15(1)(a)(iii)]

The following table provides a summary of the development application against the primary numerical controls contained within Part B1 of BDCP 2015.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
Clause 2.3	The storey limit for dwelling houses is 2 storeys.	The development application proposes a two storey dwelling.
Clause 2.4	The siting of dwelling houses and landscaping works must be compatible with the existing slope and contours of the allotment and any adjoining property. Council does not allow any development that involves elevated platforms on columns; or excessive or unnecessary terracing, rock excavation, retaining walls or reclamation.	The proposal is considered to demonstrate compliance with this clause as the building fill is pre-existing.
Clause 2.5	Any reconstituted ground level on the allotment must not exceed a height of 600mm above the ground level (existing) of an adjoining property except where: (a) the dwelling house is required to be raised to achieve a suitable freeboard in accordance with Part B12 of this DCP; or (b) the fill is contained within the ground floor perimeter of the dwelling house to a height no greater than 1 metre above the ground level (existing) of the allotment.	The proposal is considered to demonstrate compliance with this clause as the building fill and other reconstituted ground levels are pre-existing.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
Clause 2.7	The minimum setback for a building wall to the primary road frontage is: (a) 5.5 metres for the first storey (i.e. the ground floor); and (b) 6.5 metres for the second storey.	4.1m – existing non-compliance 4.2m – non-compliance justified below
Clause 2.8	The minimum setback to the secondary road frontage is: (a) 3 metres for a building wall; and (b) 5.5 metres for a garage or carport that is attached to the building wall.	4.3m 3.6m - existing non-compliance
Clause 2.9	For the portion of the building wall that has a wall height less than or equal to 7 metres, the minimum setback to the side boundary of the allotment is 0.9 metre.	The proposal depicts a 1.8m setback to the southern boundary and 3.4m setback to the western boundary demonstrating compliance with this clause.
Clause 2.12	Dwelling houses must provide a minimum 80m ² of private open space behind the front building line. This may be in the form of a single area or a sum of areas provided the minimum width of each area is 5 metres throughout.	The total private open space for the site is 0m ² due to the assessable open space to the western side of the dwelling not meeting the minimum 5m x 5m dimensions. The non-compliance is considered satisfactory as it is a non-compliance that has existed prior to the lodgement of this application.
Clause 2.13	At least one living area must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid–winter solstice. Council may allow light wells and skylights to supplement this access to sunlight provided these building elements are not the primary source of sunlight to the living areas.	The proposal depicts living areas with western and eastern windows which will receive the minimum requirement of direct sunlight to living areas.
Clause 2.14	At least one living area of a dwelling on an adjoining allotment must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid–winter solstice. Where this requirement cannot be met, the development must not result with additional overshadowing on the affected living areas of the dwelling.	It is considered that compliance is demonstrated with this Clause with adjoining dwellings maintaining the minimum 3 hours of sunlight to a living area at the mid-winter solstice.
Clause 2.15	A minimum 50% of the private open space required for the dwelling house and a minimum 50% of the private open space of a dwelling on an adjoining allotment must receive at least 3 hours of sunlight between 9.00am and 5.00pm at the equinox. Where this requirement cannot be met for a dwelling on an adjoining allotment, the development must not result with additional overshadowing on the affected private open space.	The proposal fails to demonstrate compliance with this clause as the application does not propose compliant private open space in accordance with Clause 2.12, Part B1 of the BDCP 2015, therefore the minimum solar access requirements to private open space cannot be achieved. Notwithstanding this, It is considered that compliance is demonstrated with reference to adjoining dwellings maintaining the minimum 3 hours of sunlight to at least 50% of their private open space at the equinox.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
Clause 2.17	Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must: (a) offset the windows between dwellings to minimise overlooking; or (b) provide the window with a minimum sill height of 1.5 metres above floor level; or (c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres above floor level; or (d) use another form of screening to the satisfaction of Council.	It is considered that compliance is demonstrated with this Clause as the proposed windows are offset from adjoining living area or bedroom windows on adjoining allotments.
Clause 2.18	Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where: (a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non-habitable room; or (b) the window has a minimum sill height of 1.5 metres above floor level; or (c) the window has translucent glazing to a minimum height of 1.5 metres above floor level; or (d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling.	It is considered that compliance is demonstrated with this Clause as the proposed windows are either to a bedroom, bathroom, laundry or the like (as mentioned in Clause 2.18a) or considered to prevent overlooking of more than 50% of the private open space of an adjoining dwelling.
Clause 2.19	Council may allow dwelling houses to have an upper floor side or rear balcony solely where the balcony is not accessible from a living area or hallway, and the balcony design: (a) does not have an external staircase; and (b) does not exceed a width of 1.5 metres throughout; and (c) incorporates a form of screening to the satisfaction of Council such as partially recessing the balcony into the building.	The proposal is considered to demonstrate compliance with this clause as the proposed upper floor balconies are considered to be front balconies rather than side or rear balconies. The balconies are also considered to be of minimal privacy impact due to their orientation to the street.

STANDARD	BDCP 2015 PART B1	
	REQUIRED	COMPLIANCE
Clause 2.21	The maximum roof pitch for dwelling houses is 35 degrees.	The roof pitch of the portion of the dwelling to which alterations and additions are proposed measures at two degrees, demonstrating compliance with this clause.

As demonstrated in the table above, an assessment of the Development Application has revealed that the proposal fails to comply with Clause 2.7 Part B1 of the BDCP 2015. Below are the listed reasons as to why the setback to the primary boundary should be supported.

Setbacks to the primary road frontage

Clause 2.7 of Part B1 of the BDCP 2015 requires the dwelling to have a minimum setback for a building wall to the primary road frontage of 5.5m for the first storey and 6.5m for the second storey.

The non-compliance in question arises due to the nature of the location of the existing dwelling. The building wall setback for the first storey of the dwelling to the primary road frontage is 4.1m which results in a non-compliance that has existed since the dwelling was constructed. The second storey of the dwelling is setback from the primary frontage (Carnarvon Crescent, Georges Hall) 4.2m. It is considered that enforcing compliance with the abovementioned clause in relation to wall height would be unreasonable. The second storey setback to the primary road frontage is considered to be of minimal environmental impact as the alterations and additions are contained wholly within the previous built form of the dwelling. It is also noted that the impact to the neighbours would be negligible while the setbacks adopted by the applicant will provide for no discernible impact on the streetscape.

Planning agreements [section 4.15C(1)(a)(iia)]

There are no planning agreements that apply to this application.

The regulations [section 4.15C(1)(a)(iv)]

The proposal does not raise any issues with respect to the Regulations.

The likely impacts of the development [section 4.15C(1)(b)]

The likely impacts of the proposal have been managed through the design of the development which is compliant with Council's planning controls, with the exception of the wall height as contained within BLEP 2015 and the second storey setback to the primary road frontage contained within Part B1 of the BDCP 2015. These non-compliances have been addressed previously within this report, and it is concluded that there would be no adverse impacts on the locality as a result.

Suitability of the site [section 4.15C(1)(c)]

The proposal is a permissible form of development on the subject site, and represents a built form that is compatible with the existing and desired future character of the locality. Whilst the development proposes a variation to the wall height and the second storey setback to the primary road frontage, it is considered that the built form proposed is representative of the bulk and scale of the dwelling development as originally constructed. The proposal is a development that can be expected in a Low Density Residential zone and is capable of accommodating the proposed development. Accordingly, the site is considered to be suitable for the proposed development.

Submissions [section 4.15C(1)(d)]

No submissions were received for or against the development.

The public interest [section 4.15C(1)(e)]

With regard to the relevant planning considerations, it is concluded that the proposed development would not contravene the public interest. The matters raised have been satisfactorily addressed, and it is considered that there will be no unreasonable impacts on the locality.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, and the relevant planning controls.

The proposed development complies with all applicable planning controls, with the exception of wall height in accordance with the BLEP 2015 and the second storey setback to the primary road frontage contained within Part B1 of the BDCP 2015. It is recommended that the variations be supported in light of the justifications presented in this report.

RECOMMENDATION

It is recommended that:

1. The Clause 4.6 submission in relation to wall height under Clause 4.3(2B)(b) of BLEP 2015 be supported; and
2. Development Application No. DA-867/2018 be approved subject to the conditions included at Attachment B.

CONDITIONS OF CONSENT

- 1) The proposal shall comply with the conditions of Development Consent. A Construction Certificate shall not be issued until the plans and specifications meet the required technical standards and the conditions of this Development Consent are satisfied.
- 2) Development shall take place in accordance with Development Application No. DA-867/2018, submitted by Ridge Designs, accompanied by the Drawings as listed in the table below, dated and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder and/or except where amended by the conditions contained in this approval.

Drawing No. & Rev	Drawing/Document Title	Prepared by	Dated
1.01 Revision C	Site Plan	Ridge Designs	18.02.19
2.1 Revision A	Lower floor plan	Ridge Designs	18.02.19
2.2 Revision A	Ground floor plan	Ridge Designs	18.02.19
2.3 Revision C	First floor plan	Ridge Designs	18.02.19
2.4 Revision C	Roof Plan	Ridge Designs	18.02.19
3.1 Revision C	Elevations	Ridge Designs	18.02.19
3.2 Revision C	Elevations	Ridge Designs	18.02.19
4.01 Revision C	Section	Ridge Designs	18.02.19

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

Prior to the release of a Construction Certificate the following conditions MUST be satisfied and nominated fees/contributions/bonds paid:

- 3) The Certifying Authority must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 4) A detailed landscape plan prepared by a qualified landscape architect or designer is to be approved prior to the issue of a Construction Certificate. The landscape plan is to be prepared in accordance with the relevant DCP and is to show all features, built structures including retaining walls, irrigation, mulch and natural features such as significant gardens, landscaping, trees, natural drainage lines and rock outcrops that occur within 3 metres of the site boundary. The landscape plan shall consider any Stormwater, hydraulic or overland flow design issues where relevant.
- 5) Approval in accordance with Council's Tree Preservation Order (TPO) is granted to lop or remove only the trees identified to be lopped or removed on the approved plans. Separate approval shall be obtained to prune or remove trees

on adjoining properties or other trees located on the site. Failure to comply with Council's TPO may result in a fine of up to \$100,000.

- 6) A soil erosion and sediment control plan must be prepared by a suitably qualified professional, in accordance with the Bankstown Demolition and Construction Guidelines and Council's Development Engineering Standards, and submitted to the certifying authority for approval prior to the issue of a construction certificate.
- 7) The Council Approved building plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) would affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap in™.

Please refer to www.sydneywater.com.au/tapin

For Sydney Water's Guidelines for building over or next to assets, visit www.sydneywater.com.au 'Plumbing, building & developing' then 'Building Plan Approvals' or call 13000 TAPIN.

Prior to release of a construction certificate Sydney Water must issue either a Building Plan Assessment letter which states that your application is approved, or the appropriate plans must be stamped by a Water Servicing Coordinator.

- 8) A Construction Certificate shall not be issued until written proof that all bonds, fees and/or contributions as required by this consent have been paid to the applicable authority.
- 9) A long service levy payment which is 0.35% of the total cost of the work is to be paid to the Building and Construction Industry Long Service Payments Corporation.
- 10) Pursuant to section 4.17(1) of the Environmental Planning and Assessment Act 1979, and the Bankstown City Council Section 94A Development Contributions Plan 2009 (Section 94A Plan), a contribution of \$2552.00 shall be paid to Council.

The amount to be paid is to be adjusted at the time of actual payment, in accordance with the provisions of the Section 94A plan. The contribution is to be paid before the issue of the construction certificate.

Note: The Section 94A Contributions Plans may be inspected at Council's Customer Service Centre, located at Upper Ground Floor, Civic Tower, 66-72 Rickard Road, Bankstown, between the hours of 8.30am-5.00pm Monday to Friday.

- 11) Finished surface levels of all internal works and at the street boundary, including driveways, landscaping and drainage structures, must be as shown on the approved plans. The levels at the street boundary must be consistent with the Street Boundary Alignment Levels issued by Council.
- 12) Stormwater drainage from the development shall be designed so as to comply with Council's Development Engineering Standards and the requirements of the BASIX Certificate. A final detailed stormwater drainage design shall be prepared by a qualified Professional Civil Engineer in accordance with the above requirements and shall generally be in accordance with the concept stormwater Sheet No: 1 Issue 1, dated 7 September 2018, prepared by MBC Engineering Pty Ltd and as amended by the approved architectural plans. The final plan shall be certified by the design engineer that it complies with Council's Development Engineering Standards, the BASIX Certificate and the relevant Australian Standards.
- 13) Where Council approved cut or fill exceeds 200mm and stable batter of 1 vertical to 3 horizontal maximum grade cannot be achieved, then a masonry or other proprietary material retaining wall, intended and suitable for that purpose, shall be constructed within the development site. Note, filling of the site needs specific approval from Council.

The retaining wall shall be located so that it will not impede or obstruct the natural flow of stormwater. Retaining walls exceeding 600mm in height shall be designed by a qualified professional Civil/Structural Engineer. Plans and details prepared and signed by the Engineer are to be submitted to the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate.

All works associated with the construction of the wall, including backfilling and drainage, is to be located wholly within the allotment boundaries.

- 14) As any works within, or use of, the footway or public road for construction purposes requires separate Council approval under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993, Council requires that prior to any Construction Certificate for this development being issued, a Works Permit and or a Roadway/Footpath Building Occupation Permit shall be obtained where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

- a) Dig up, disturb, or clear the surface of a public footway or public road,
- b) Remove or interfere with a structure or tree (or any other vegetation) on a public footway or public road,
- c) Connect a road (whether public or private) to a classified road,

- d) Undertake footway, paving, vehicular crossing (driveway), landscaping or stormwater drainage works within a public footway or public road,
- e) Install utilities in, under or over a public road,
- f) Pump water into a public footway or public road from any land adjoining the public road,
- g) Erect a structure or carry out a work in, on or over a public road
- h) Require a work zone on the public road for the unloading and or loading of vehicles
- i) Pump concrete from within a public road,
- j) Stand a mobile crane within a public road
- k) Store waste and recycling containers, skips, bins and/or building materials on any part of the public road.
- l) The work is greater than \$25,000.
- m) Demolition is proposed.
- n) Subdivision is proposed.
- o) A Swimming pool is proposed.

Assessment of Works Permits (a to e) includes the preparation of footway design levels, vehicular crossing plans, dilapidation reports and issue of a Road Opening Permit.

All proposed works within the public road and footway shall be constructed under the supervision and to the satisfaction of Council. The applicant/developer shall arrange for necessary inspections by Council whilst the work is in progress.

For commercial or multi-unit residential developments within the designated CBD or an urban village area, footway design and construction and street tree supply, installation and tree hole detailing shall be as per the Council master plan for that area. Full width footways are to be supplied and installed at full cost to the developer to specification as supplied by Council.

Layout plan of pavement to be submitted to Council for approval prior to the issue of the Works Permit.

All Council fees applicable, minimum restoration charges and inspection fees shall be paid prior to the assessment of the Work Permit in accordance with Council's adopted fees and charges. Note: Additional fees after approval will be charged where the Work Permit requires occupation of the Road or Footpath i.e. Hoardings, Work Zones etc.

In determining a Works Permit, Council can impose conditions and require inspections by Council Officers.

Forms can be obtained from Council's Customer Service counter located on the ground floor of Council's administration building at 66 - 72 Rickard Road, Bankstown or Council's website www.bankstown.nsw.gov.au

Part of any approval will require the person or company carrying out the work to carry public liability insurance to a minimum value of ten million dollars. Proof of the policy is to be provided to Council prior to commencing any work approved by the Work Permit including the Road Opening Permit and must remain valid for the duration of the works.

The commencement of any works on public land, including the footway or public road, may incur an on the spot fine of not less than \$1100 per day that work continues without a Works Permit and/or a Roadway/Footpath Building Occupation Permit.

All conditions attached to the permit shall be strictly complied with prior to occupation of the development. Works non-conforming to Council's specification (includes quality of workmanship to Council's satisfaction) shall be rectified by the Council at the applicant's expense.

- 15) A certificate from a professional engineer certifying the structural capacity of the existing building will be appropriate to the building's proposed new use or is capable of supporting the loads imposed by the new structure must be provided to the certifying authority prior to the issue of a construction certificate.
- 16) The development is to be carried out in accordance with the commitments shown on the BASIX Certificate. The BASIX commitments approved with this Development Application are to be reflected in the Construction Certificate plans and specifications. Any proposed changes to the BASIX commitments after the Construction Certificate has been issued will require an updated BASIX Certificate and a new Construction Certificate.
- 17) Stormwater runoff from all areas proposed for development shall be collected and connected to the existing stormwater system within the site, subject to the existing system being evaluated by a qualified professional Civil Engineer and found to be structurally adequate and to have the required hydraulic capacity, as required in Council's Development Engineering Standards.
The existing system shall be upgraded or replaced as necessary to comply with the requirements above. The plan for the proposed drainage system together with the hydraulic evaluations shall be submitted to the PCA for approval with the application for the Construction Certificate.
- 18) The sum of the impervious areas associated with the car parking area, driveway and path must not exceed 55% of the area between the dwelling and the primary frontage.

CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION WORKS COMMENCING

- 19) The building work in accordance with the development consent must not be commenced until:
- a. a construction certificate for the building work has been issued by the council or an accredited certifier, and
 - b. the person having benefit of the development consent has:
 - i. appointed a principal certifying authority for the building work, and
 - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - c. the person having the benefit of the development consent, if not carrying out the building work as an owner-builder, has:
 - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - ii. notified the principal certifying authority of any such appointment, and
 - iii. unless the person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - d. the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the building / subdivision work.
- 20) Existing trees within the vicinity of the construction works or paths of travel for construction vehicles accessing the development that are to be retained shall be protected with temporary fencing of a style non injurious to tree roots, placed 2m from the trunk base of the existing tree to prevent damage during construction, and retained in accordance with Council's Tree Preservation Order. There is to be no stockpiling of materials within the 2m fenced zone.
- 21) Suitable erosion and sediment control measures shall be erected in accordance with the plans accompanying the Construction Certificate prior to the commencement of construction works and shall be maintained at all times.

- 22) Council warning sign for Soil and Water Management must be displayed on the most prominent point of the site, visible to both the street and site works. The sign must be displayed throughout the construction period.
- 23) Prior to the commencement of work, the applicant must provide a temporary on-site toilet if access to existing toilets on site is not adequate.
- 24) Prior to the commencement of work, a fence must be erected around the area of the works, except where an existing 1.8m high boundary fence is in good condition and is capable of securing the area. Any new fencing shall be temporary (such as cyclone wire) and at least 1.8m high. All fencing is to be maintained for the duration of construction to ensure that the work area is secured.

Where the work is located within 3.6m of a public place then a Type A or Type B hoarding must be constructed appropriate to the works proposed. An application for a Work Permit for such hoarding must be submitted to Council for approval prior to the commencement of work.

- 25) A sign shall be displayed on the site indicating the name of the person responsible for the site and a telephone number of which that person can be contacted during and outside normal working hours or when the site is unattended.
- 26) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of the Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- 27) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - a. in the case of work for which a principal certifying is required to be appointed:
 - i. the name and licence number of the principal contractor, and
 - ii. the name of the insurer by which the work is insured under Part 6 of the Act,
 - b. in the case of work to be done by an owner-builder:
 - i. the name of the owner-builder, and

- ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

- 28) The demolition of the roof of the principal dwelling currently existing on the property must be undertaken, subject to strict compliance with the following: -

- a) The developer is to notify adjoining residents seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of, and directly opposite the demolition site.
- b) Written notice is to be given to Canterbury-Bankstown Council for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections shall be undertaken by Canterbury-Bankstown Council:
 - (i) A *precommencement* inspection shall be carried out by Council when all the site works required as part of this consent are installed on the site and prior to demolition commencing.
 - (ii) A *final* inspection shall be carried out by Council when the demolition works have been completed to ensure that the site is left in a satisfactory manner, in accordance with the conditions of this consent.

NOTE: Payment of an inspection fee at Council's current rate will be required prior to each inspection. Council requires 24 hours notice to carry out inspections. Arrangements for inspections can be made by phoning **9707 9410, 9707 9412 or 9707 9635.**

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, license number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence or hoarding between the work site and any public place.
Access to the site shall be restricted to Authorised Persons Only and the site shall be secured against unauthorised entry when the building work is

not in progress or the site is otherwise unoccupied. Where demolition is to occur within 3m of a public place a Work Permit application for the construction of a Class A or Class B hoarding shall be submitted to Council for approval.

- e) The demolition plans must be submitted to the appropriate Sydney Water Office to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements. If the development complies with Sydney Water's requirements, the demolition plans will be stamped indicating that no further requirements are necessary.
- f) Demolition is to be carried out in accordance with the appropriate provisions of Australian Standard AS2601-2001.
- g) The hours of demolition work shall be limited to between 7.00am and 6.00pm on weekdays, 7.00am and 1.00pm on Saturdays and no work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.
- h) Where materials containing asbestos cement are to be removed, demolition is to be carried out by licensed contractors who have current WorkCover Accreditation in asbestos removal.
- i) Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the NSW EPA 'Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes 2004'.
- j) Demolition procedures shall maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- k) During demolition, the public footway and public road shall be clear at all times and shall not be obstructed by any demolished material or vehicles. The public road and footway shall be swept (NOT hosed) clean of any material, including clay, soil and sand. (NOTE: If required, Council will clean the public road/footway at the applicant's expense). On the spot fines may be levied by Council against the demolisher and or owner for failure to comply with this condition.
- l) All vehicles leaving the site with demolition materials shall have their loads covered and vehicles shall not track soil and other material onto the public roads and footways and the footway shall be suitably protected against damage when plant and vehicles access the site. All loading of vehicles with demolished materials shall occur on site.

- m) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
 - n) Care shall be taken during demolition to ensure that existing services on the site (i.e. sewer, electricity, gas, and phone) are not damaged. Any damage caused to existing services shall be repaired by the relevant authority at the applicant's expense.
 - o) Suitable erosion and sediment control measures shall be erected prior to the commencement of demolition works and shall be maintained at all times.
 - p) Prior to the demolition of any building constructed before 1970, a Work Plan shall be prepared and submitted to Council in accordance with Australian Standard AS2601-2001 by a person with suitable expertise and experience. The Work Plan shall outline the identification of any hazardous materials, including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- 29) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- a. showing the name, address and telephone number of the principal certifying authority for the work, and
 - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - c. stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- 30) The hours of site works shall be limited to between 7.00am and 6.00pm on weekdays and 7.00am and 1.00pm on Saturdays. No work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.
- 31) The building work must be carried out in accordance with the requirements of the Building Code of Australia.

- 32) All Civil and Hydraulic engineering works on site must be carried out in accordance with Council's Development Engineering Standards. All Civil and Hydraulic engineering works associated with Council's assets and infrastructure must be carried out in accordance with Council's Work Permit requirements and to Council's satisfaction.
- 33) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 34) If soil conditions require it, retaining walls or other approved methods of preventing movement of the soil must be provided, and adequate provisions must be made for drainage. Separate approval may be required for retaining walls should they be required.
- 35) If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- a. protect and support the adjoining premises from possible damage from the excavation, and
 - b. where necessary, underpin the adjoining premises to prevent any such damage.
- 36) The stormwater drainage system shall be constructed in accordance with Council's Development Engineering Standards and the engineering plans and details approved by the Principal Certifying Authority (PCA).

Should the developer encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, the developer must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at the developer's expense.

- 37) Prior to the commencement of work, the builder shall prepare a photographic record of the road reserve which clearly shows its condition prior to works occurring on site. For the entirety of demolition, subdivision or construction works, there shall be no stockpiling of building spoil, materials, or storage of equipment on the public road, including the footway and the road reserve shall be maintained in a safe condition at all times. No work shall be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.

CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION

- 38) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.

- 39) A final Occupation Certificate shall not be issued until the requirements of Condition 4 have been met in accordance with this consent.
- 40) A final Occupation Certificate shall not be issued until all conditions relating to demolition, construction and site works of this development consent are satisfied and Council has issued a Work Permit Compliance Certificate.
- 41) Landscaping is to be installed in accordance with the approved landscape plan. All works and methods nominated and materials and plants specified on the approved landscape plan are to be completed prior to the issue of an occupation certificate. The landscaping shall be maintained for the life of the development.
- 42) Lighting must be provided to the entries of the dwellings, driveways and parking areas to promote a high level of safety and security at night and during periods of low light. Lighting provided should be hooded, shielded or directed away from neighbouring dwellings to minimise glare and associated nuisances to residents.
- 43) A Copy of the Work Permit Compliance Certificate shall be submitted to the PCA Prior to the issue of the Occupation Certificate.
- 44) The premises must be readily identified from the street with the allocated house numbers. Numbering of the development without Council's written approval is not permitted.

Canterbury Bankstown Local Planning Panel - 6 May 2019

ITEM 4	20-22 Wardell Road, Earlwood
	Amalgamation of three lots into one. Demolition of two dwelling houses and factory structure and construction of a boarding house development consisting of two x two storey boarding houses with 16 rooms each (total of 32 rooms), with associated car parking and landscaping
FILE	DA-137/2018 – Canterbury
ZONING	R2 Low Density Residential
DATE OF LODGEMENT	5 April 2018
APPLICANT	R Emmi
OWNERS	R Emmi and J Emmi
ESTIMATED VALUE	2,656,966
AUTHOR	Planning

REPORT

This matter is reported to Council's Local Planning Panel as the application is the subject of 10 or more unique submission of objection.

Development Application DA-137/2018 proposes the consolidation of three lots into one, site excavation and remediation, demolition of existing structures and the construction of two boarding houses containing a total of 16 boarding rooms each and associated works.

The application was publically exhibited for a period of 21 days from 24 April – 16 May 2018. A total of 14 unique submissions, proforma letters from 172 households and two petitions signed by a total of 182 persons were received. The matters raised relate to insufficient parking, adverse parking and traffic impacts, relocation of the existing bus stop, building height, loss of privacy, views and sunlight, site contamination, management of the premises, waste and general building design. A number of matters raised have been addressed by the

Applicant during the assessment of the application, however some matters are still outstanding. The matters are discussed within the body of the report.

As outlined within the report, the design seeks departure from a number of development controls. Some of the proposed departures are considered acceptable on merit. However, the Applicant has failed to address the following departures, which Council has advised would not be accepted.

- Maximum floor space ratio provision permitted for the site pursuant to Clause 4.4 of Canterbury Local Environmental Plan 2012 (CLEP 2012).
- Character of the local area pursuant to Clause 30A of the State Environmental Planning Policy (Affordable Rental Housing) 2009.
- Objectives of the R2 Low Density Zone pursuant to Clause 2.3 of CLEP 2012.
- Provisions relating to car parking layout pursuant to Part B1 – Transport and Parking of Canterbury Development Control Plan 2012 (CDCP 2012).
- Provisions relating to landscaping pursuant to Part B2 - Landscaping of CDCP 2012.
- Various provisions outlined within Part C1 – Dwelling Houses and Outbuildings relating to landscaping, layout and orientation, building design and solar access to neighbouring properties.

Acceptance of a design that seeks the number of variations to key development controls, such as those sought in this application, is considered to be an overdevelopment of the site. The Applicant has had ample opportunity to address the concerns raised by Council, however has not done so to an acceptable level. On this basis, the application is recommended for refusal.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that the application be refused, for the reasons detailed in Attachment B.

ATTACHMENTS

- A. Section 4.15 Assessment Report
- B. Reasons for Refusal

DA-137/2018 - ASSESSMENT REPORT

Background

On 25 October 2017, a pre-DA meeting was held with the Applicant regarding a proposed six lot subdivision for dual occupancy as well as a boarding house development including two lot subdivision at the subject site. The following advice was provided at that meeting in relation to the boarding house development:

- a) *Boarding houses are only permissible in the R2 zone if they are located within an “accessible area” as defined within the ARH SEPP.*
- b) *The front allotment needs to comply with the minimum lot size specified for dwellings within CLEP 2012 excluding the access way.*
- c) *The rear allotment needs to comply with 600m2 minimum lot size requirement within CLEP 2012 excluding the access way.*
- d) *The proposed breezeways won’t be supported in the design because it doesn’t resemble the character of the area and do not provide for good amenity.*
- e) *The design of the boarding house should resemble the character of the area, therefore it should resemble a dwelling house.*
- f) *Dwelling house controls in Part C1 of CDCP 2012 should be used as a guide to ensure the design of the development is in character with the area (as required by Section 30A of the ARH SEPP).*
- g) *Need to address boarding house controls in the ARH SEPP 2009.*
- h) *The current design appears to be inconsistent in terms of the character of the area. i.e the private open space is separate, it resembles a residential flat building in style and communal roof.*
- i) *It was recommended that a communal room be incorporated into the design of appropriate size to accommodate the number of expected lodgers.*

The subject application DA-137/2018 was lodged with Council on 5 April 2018. The application was publically advertised between 24 April – 16 May 2018. A total of 14 unique submissions, proforma letters from 172 households and 2 petitions signed by a total of 182 persons were received.

On 13 July 2018, an additional information request letter was issued to the Applicant outlining a number of matters that were to be addressed. A summary of the matters raised is outlined below:

- a) Non-compliances with the relevant requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP), including but not limited to, floor

- space ratio, building height, landscaped area, solar access, private open space, parking, communal rooms, motorcycle and bicycle parking as well as character.
- b) The need for an updated Statement of Environmental Effects as well as acoustic report to address Clause 101 of the State Environmental Planning Policy (Infrastructure) 2007.
 - c) Non-compliances with the relevant requirements of Canterbury Development Control Plan 2012 (CDCP 2012), including but not limited to, accessible and adaptable design, crime prevention, landscaping, height, setback requirements, building design, solar access to neighbouring development, visual privacy and fences.
 - d) Matters raised by Council's Team Leader – Traffic, Landscape Architect, Environmental Health Officer, Project Officer – Resource Recovery.

Information to address the above was due to be submitted to Council on 3 August 2018. The information was submitted to Council on 14 September 2019.

On 21 December 2018, a further information request letter was issued to the Applicant. A summary of the matters raised is below:

- a) Non-compliances with the relevant requirements of ARH SEPP, including but not limited to, floor space ratio, building height, solar access, parking, communal rooms, motorcycle and bicycle parking and character. The letter also raised proposed changes to the ARH SEPP that was on notification at the time the letter was issued.
- b) Non-compliances with the relevant requirements of Canterbury Development Control Plan 2012 (CDCP 2012), including but not limited to, transport and parking, landscaping, building design, solar access to neighbouring development.
- c) Proposed amendments to the ARH SEPP and proposed amendments to CLEP 2012 and CDCP 2012 relating to boarding houses.

Information to address the above was due to be submitted to Council on 18 January 2019. The Applicant was advised that this was the final opportunity to address the matters raised by Council. The information was submitted to Council on 22 February 2019. On 25 February 2019, a meeting was held with the Applicant (at the Applicant's request) to run through the changes. No commitments or agreements were made at this meeting.

As outlined within the report below, based on the assessment undertaken, the amended design still has not addressed a number of key matters raised by Council specifically relating to the maximum floor space ratio development standard, building design, landscaping, as well as parking matters.

Given the number of the matters outstanding, coupled with the ample opportunity afforded to the Applicant to address the concerns, refusal of the application is recommended.

Site Analysis

The site is located at 20-22 Wardell Road, Earlwood and is legally described as Lot 1181 in DP 456161, Lot A in DP 346191 and Lot A in DP 322845. The site has a combined frontage to Wardell Road of 25.6m and a total site area of 1,801.9m². Wardell Road is a regional road. The site currently contains two existing dwellings, a metal shed and associated structures. Vehicular access to the site is obtained by the two existing separate driveways located along Wardell Road. Historically, the site has been used for residential, boot factory and metal spinning workshop as well as plant nursery purposes.

In terms of surrounding development, Beaman Park directly adjoins the site to the north and east. The land to the south and west is zoned R2 Low Density Residential. Single to two-storey detached residential dwellings adjoin the site to the south. The land located to the west on the opposite side of Wardell Road primarily contains single to two-storey detached residential dwellings. A Place of Public Worship (Imam Husain Islamic Centre (IHIC) is located to the west of the site, along Lang Road.



Figure 1: Aerial Map of Site (subject site highlighted)

Source: Near Maps



Figure 2: Aerial Location Map (subject site highlighted)

Source: Near Maps



Figure 3: Subject site (view south-west from Wardell Road)

Source: Google Maps

Proposal

The proposal includes consolidation of three lots into one, site excavation and remediation, demolition of existing structures and the construction of two boarding houses containing a total of 16 boarding rooms each (including one x Manager's room) and associated works. The proposal is outlined in detail below:

- Construction of two boarding house buildings comprising 16 rooms each (including one manager's room) resulting in a design that comprises:
- Total of 32 single boarding rooms in total, including two accessible rooms;
- Allocation of one of the rooms as a Manager's room with associated private open space;
- Two internal communal rooms.
- Communal courtyard;
- Clothes drying area;
- 16 car parking spaces (including two accessible parking spaces);
- Six motorcycle parking spaces;
- Bicycle parking for 10 bicycles;
- Bin storage areas; and
- New vehicle entry from Wardell Road.

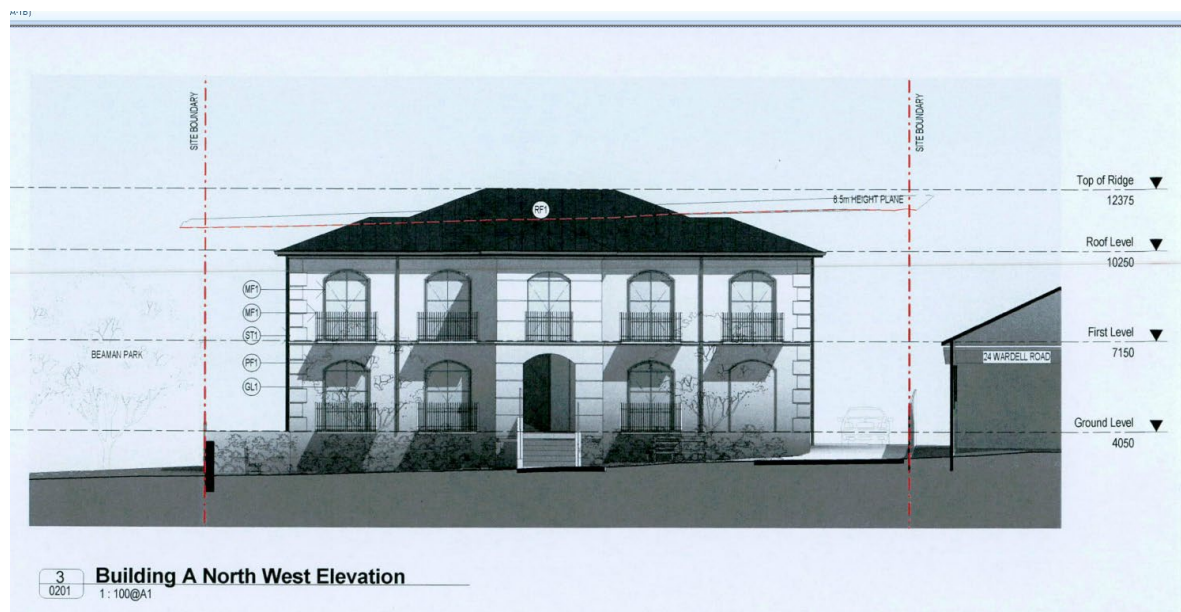


Figure 4: Proposed front elevation of Building A

Source: Karadimas Holdings Pty Ltd

Any demolition works requires specific consideration of the Australian Standards 2601 – 1991 *Demolition of Structures* as required by Clause 92 of the Environmental Planning and Assessment Regulation 2000.

Statutory Considerations

When determining this application, the relevant matters listed in Section 4.15 of the Environmental Planning and Assessment Act 1979 must be considered. In this regard, the following environmental planning instruments, development control plans (DCPs), codes and policies are relevant:

- (a) State Environmental Planning Policy (Affordable Rental Housing) 2009.
- (b) State Environmental Planning Policy (Infrastructure) 2007.
- (c) State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX) 2004.
- (d) Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment.
- (e) State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX).
- (f) State Environmental Planning Policy 55 – Remediation of Land.
- (g) Canterbury Local Environmental Plan 2012.
- (h) Canterbury Development Control Plan 2012.
- (i) Canterbury Development Contributions Plan 2013.

Assessment

The development application has been assessed under the aims and objectives and Section 4.15 of the Environmental Planning and Assessment Act, 1979 and the following key issues emerged:

- **State Environmental Planning Policy (Affordable Rental Housing) 2009**

The ARH SEPP aims to facilitate the delivery of affordable housing in NSW through incentivising home owners, developers and social housing providers to invest and create new affordable rental housing. Division 3 (Clauses 25-30) of the ARH SEPP provides the planning framework for the facilitation of boarding houses. The subject site is zoned R2 Low Density Residential and triggers Division 3 of the ARH SEPP, as per Clause 26 and 27. In accordance with Clause 27(2), Division 3 does not apply to development on land within R2 Low Density Residential unless the land is within an accessible area. An accessible area is defined as follows within the ARH SEPP:

accessible area means land that is within:

- (a) 800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or
- (b) 400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or
- (c) 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour

servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.

As illustrated in Figure 5 below, the subject site is located 750m walking distance to the entrance of Dulwich Hill Railway Station. The boarding house is therefore permitted in the R2 zone.

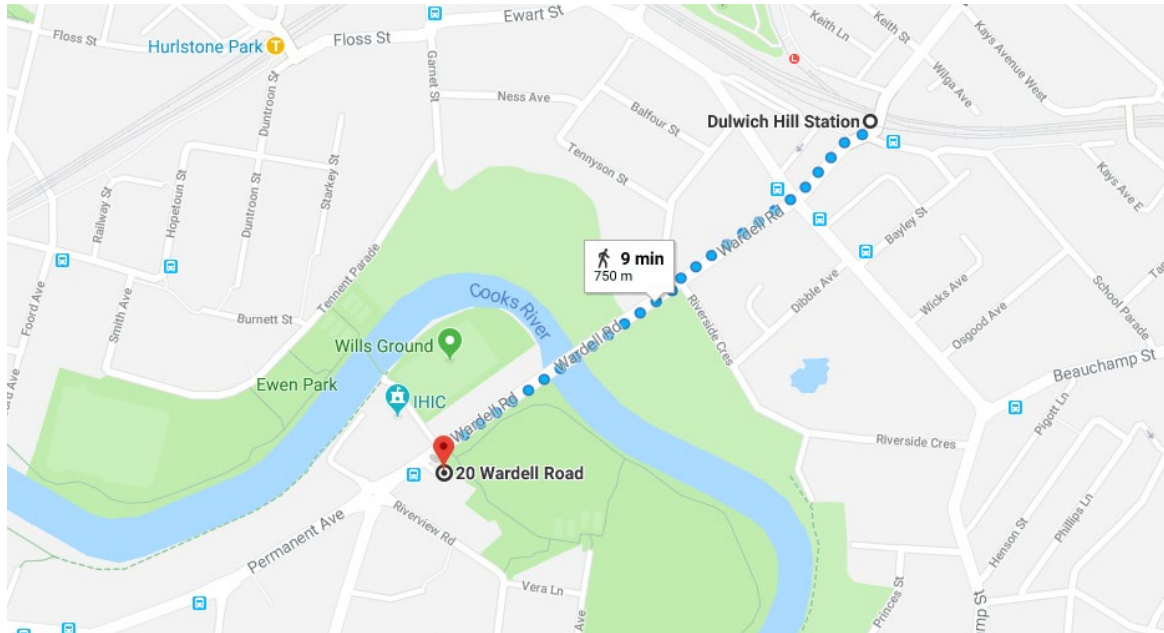


Figure 5: Walking Distance from Subject Site to Dulwich Hill Railway Station

Source: Google Maps

Clause's 29-30A provide the development standards for the assessment of a boarding house. An assessment of the proposal against these standards is provided below:

Clause 29: Standards that cannot be used to refuse consent		
Requirement	Proposal	Complies
<p>1 Floor Space Ratio – A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:</p> <p>(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or</p>	<p>A maximum 0.5:1 floor space ratio control applies to the site (dwellings, semi-detached and dual occupancies). The development comprises a total GFA of 926.5sqm which equates to an FSR of 0.51:1, which does not comply with the 0.5:1 FSR for the residential accommodation permitted in the zone.</p> <p>The Applicant has not provided a Clause 4.6 variation statement to enable consideration of this proposed departure.</p>	No

(b) N/A (c) N/A		
2 (a) Building Height – 8.5m If the building height of all proposed buildings is not more than the maximum building height permitted under another EPI for any building on the land.	Proposed: Max 9.065m (calc by Applicant). Max 9.015m (calc by Council). Building A: 9.015m (12.235-3.22RL). Building B: 8.855m (12.235-3.38RL).	No
(b) Landscaped Area If the landscape treatment of the front setback area is compatible with the streetscape in which the building is located.	The front setback comprises deep soil area as well as walkway to main entrance and vehicular access point. The design is generally compatible with the streetscape. The design has been revised to relocate the bin storage area and motorcycle spaces to within the building envelope, so they are not visible from the public domain. Notwithstanding the above, the design does not comply with the minimum deep soil requirements outlined within CDCP 2012 and Council's Landscape Architect raises concern given the landscape plan submitted was not prepared by a qualified landscape architect. This matter is discussed further within the CDCP 2012 section of this report.	No
(c) Solar Access Where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.	The internal communal living rooms are located in the north-eastern corners of the buildings. Windows serving the internal communal areas are located along the northern-western and south-eastern elevations of each building. The north-eastern elevation of each building receives solar access between 9am-3pm on 21 June and therefore the communal living rooms will receive greater than 3 hours solar access.	Yes
(d) Private Open Space If at least the following private open space areas are provided (other than the front setback area): i) One area of at least 20sqm with a minimum dimension of 3 metres is provided for the use of the lodgers,	i) A centrally located private open space area has been provided for use by both boarding houses. The area is located between both boarding houses and is approximately 107sqm in area and comprises a dimension greater than 3m The areas are greater than 20sqm and comprise a greater 3m dimension.	Yes

<p>ii) If accommodation is provided on site for a boarding house manager – one area of at least 8sqm with a minimum dimension of 2.5 metres is provided adjacent to that accommodation.</p>	<p>The communal area comprises a BBQ area and bench seating. However, Council's Landscape Architect raises concern with the design given it comprises limited seating spaces or facilities.</p> <p>ii) The private open space area for the house manager is 8.5sqm, comprises a minimum depth of 2.5m and is provided adjacent to the Manager's accommodation.</p>	<p>Yes</p>
<p>(e) Parking</p> <p>i) N/A</p> <p>ii) N/A</p> <p>iiia) in the case of development not carried out by or on behalf of a social housing provider - at least 0.5 parking spaces are provided for each boarding room, and</p> <p>iiib) in the case of any development – not more than 1 parking space is provided for each person employed in connection with the development and who is a resident on site.</p>	<p>The development is not carried out by or on behalf of a social housing provider.</p> <p>A total of 31 boarding rooms are proposed which equates to a required of 15.5(16) car parking spaces. A total of 16 car parking spaces are proposed (including two x accessible parking spaces)</p> <p>Separate pedestrian access is provided from the rear car park area to each of the buildings. Council's Building Surveyor has reviewed the plan and raises no objection to this design in terms of accessibility.</p> <p>When including the manager's room in the total number of boarding rooms proposed, a total of 16 car parking spaces are required to cater for the development. On this basis, the proposed 16 car parking spaces included in the design complies with the minimum parking requirement. If the application were recommended for approval, a condition of consent could be imposed to ensure no more than 1 car parking space is allocated to the person employed for the development.</p>	<p>Yes</p> <p>Yes</p>
<p>(f) Accommodation Size</p> <p>i) If each boarding room has a gross floor area of at least: 12sqm in the case of a boarding room intended to be used by a single lodger, or</p> <p>ii) 16sqm in any other case</p>	<p>Solely single lodger rooms are proposed. The rooms vary from 12sqm-13.7sqm.</p>	<p>Yes</p>

(excluding any area used for the purposes of private kitchen or bathroom facilities)		
3 A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	All rooms are self-contained.	Yes.
4 A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	Noted.	N/A
Clause 30: Standards for boarding houses		
Requirement	Proposal	Complies
1. A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following: (a) If a boarding house has 5 or more boarding rooms, at least one communal living room will be provided.	Two communal rooms are provided for the use of all future residents. One communal room is provided within each boarding house. The communal rooms have the same size and configuration of the other boarding rooms and are therefore not adequately sized to accommodate relaxation, recreation or eating for the amount of residents proposed due to its size. It is noted that each boarding room comprises a kitchenette and laundry facility, however it is considered that the intent of the communal living room is to facilitate social interaction between residents. The small design of the communal rooms coupled with the outdoor communal area that lacks amenities does not facilitate the gathering of residents in such places.	Yes, but inadequate for the amount of proposed residents
(b) No boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25sqm.	Excluding private bathroom and kitchen areas, all rooms are under 25sqm.	Yes

(c) No boarding room will be occupied by more than 2 adult lodgers.	The Statement of Environmental Effects and architectural plans submitted indicate that solely single lodger rooms are proposed. If approval of the application was recommended, a condition of consent could be imposed to limit occupation to one lodger per single room (total of 31 lodgers and one on-site manager).	Yes – via condition of consent
(d) Adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger.	All rooms are self-contained.	Yes
(e) If the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager.	The proposal comprises 31 single rooms, capable of accommodating up to 31 lodgers. An on-site boarding house manager has been proposed (room 2 within building A).	Yes
(f) Repealed	-	-
(g) If the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another EPI permits such a use.	N/A	N/A
(h) At least one parking space will be provided for a bicycle and motorcycle for every 5 boarding rooms.	31 + 1 manager's room /5 = 6.4 spaces required. 6 motorcycle spaces and 10 bicycle spaces have been provided.	Yes
2 Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	Noted.	N/A

Clause 30AA – Boarding Houses in Zone R2 Low Density Residential

Clause 30AA of the ARH states:

“A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms”.

The site is located in an R2 Zone, however in accordance with Clause 54C (Savings and Transitional Provisions) given the subject DA was lodged prior to the commencement of the

amended ARH SEPP, the application must be determined as if the amending ARH SEPP had not commenced. Therefore this requirement does not apply to this application.

Clause 30A – Character of local area

Clause 30A of the ARH SEPP states that:

*“A consent authority must not consent to development which this Division applies unless it has taken into consideration whether the design of the development is **compatible** with the character of the local area”.*

The subject site is located on Wardell Road, Earlwood. This portion of the streetscape is predominantly characterised predominantly by single and two storey detached residential dwellings. These developments are generally located in landscaped settings, featuring minimum side setbacks of 1m on both sides and a front setback ranging from 6m-9m.

With an applicable height of 8.5m, FSR ranging between 0.5:1-0.65:1 (depending on the site size and type of development) and predominantly R2 Low Density zoning, the area in the immediate vicinity of the site is likely to be redeveloped with dwellings or dual occupancy developments. The 8.5m height limit seeks two storey development as detailed in CDCP 2012.

For the purposes of this assessment, reference is made to the case Project Venture Developments v Pittwater Council [2005] NSWLEC191 which determined that “the most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping”.

Any new development for a similar sized development (i.e dwelling or dual occupancy) would be subject to the relevant development controls specified within CLEP 2012 and CDCP 2012. As outlined within this report, Wardell Road is identified as a regional road and therefore it is envisaged that development comprises an increased front setback of 9m.

The proposed development seeks a departure to the maximum building height control specified within CLEP 2012, as well as the height and setback (specifically side setback) controls specified within CDCP 2012. As outlined later within this report, the site is flood affected and therefore the proposed variation to the height control is considered acceptable in this instance. In terms of side setbacks, the proposed development seeks a variation to the side setback to the northern boundary. Given the site adjoins a park to the north, the minor variation to the side setback is considered acceptable in this instance.

The proposed design does not comply with the minimum deep soil requirements specified within CDCP 2012. Furthermore, Council’s Landscape Architect raised concern regarding the

design of the communal open space area and the lack of landscape plan prepared by a suitably qualified landscape architect. The Applicant was provided the opportunity to address these concerns as they were outlined within Council's letter dated 21 December 2018. These matters were not adequately addressed within the information received in response to Council's letter.

In addition to the above, the development also seeks variation to Council's maximum floor space ratio development standard. This variation coupled with the variation to the minimum deep soil ratio is considered to represent an overdevelopment of the site and could be improved through a minor reduction in floor area. Again, this matter was raised by Council, but was not addressed within the most recent information submitted to Council.

Although not specifically referred to in case law, it is pertinent to consider compliance with building design controls when considering whether the design is compatible with the character of the area in accordance with 4.15 of the Environmental Planning and Assessment Act 1979. As outlined later within this report, the design is inconsistent with the building design controls specified within CDCP 2012. It is noted that the Applicant has attempted to comprise staggered wall elements within the front facades through the inclusion of Juliet balconies. However this design, coupled with the lack of use of a variety and contrasting elements results in a repetitive front design which resembles a residential flat building, which are prohibited in the zone.

As per Clause 30A, the intensity of a boarding house development should be, in part, masked by a built form that responds to the current and future character of an area. As demonstrated above the proposed development is not considered to balance the intensity of the use with a reasonable built form.

In light of the above, the proposed scheme in its current form is incompatible with the existing or desired future character of the area and does not meet Clause 30A of the ARH SEPP.

- **State Environmental Planning Policy (Infrastructure) 2007.**

Wardell Road is identified as an unclassified regional road within the NSW Roads and Maritime Services (RMS) document titled *Schedule of Classified Roads and Unclassified Regional Roads*, despite Council's maps indicating that it is a classified regional road. Subsequently, the requirements specified within Clause 101 of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) do not apply to the site, given it does not front a classified road.

Notwithstanding the above, the development includes removing and reconstructing vehicular entry points to the site from Wardell Road. The application was subsequently referred to RMS for concurrence in accordance with Section 138 of the Roads Act 1993. Within RMS' response

dated 26 June 2018, concurrence was granted, subject to conditions.

Furthermore, a Traffic and Parking Assessment report dated 6 September 2018 was prepared by John Coady and submitted as part of the application. The traffic report concluded that the development does not result in any unacceptable traffic implications. Council's Traffic Engineer and Development Engineer have reviewed the report and raised no objection from a traffic perspective, however raised concern from a parking perspective. These matters are discussed later within the report.

- **State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX).**

Two single dwelling BASIX Certificates (Certificate Nos. 905925S_02 and 905922S_02) dated 5 September 2018 accompany the application. The commitments include energy and thermal comfort requirements. The commitments have been shown on the relevant plans, where relevant (i.e rainwater tank and solar panels). The design achieves a pass against the project scores for water, thermal comfort and energy. Subsequently, the design satisfies the relevant provisions of the State Environmental Planning Policy 2004 (Building Sustainability Index: BASIX) (SEPP BASIX).

- **State Environmental Planning Policy 55 – Remediation of Land.**

State Environmental Planning Policy 55 - Remediation of Land (SEPP 55) aims to promote the remediation of contaminated land for the purposes of reducing risk to human health or any other aspect of the environment.

Clause 7 of SEPP 55 states that a consent authority must not consent to the carrying out of development unless it has considered whether the land is contaminated. If the land is contaminated, it must ascertain whether it is suitable in its contaminated state for the proposed use or whether remediation of the land is required.

A Preliminary and Detailed Site Contamination Investigation report was prepared by Douglas Partners dated March 2018 and submitted as part of the application. The results of the investigation found that levels associated with asbestos, lead, chromium and nickel exceeded the human-health based criteria. On this basis, the report recommended that further investigation including groundwater testing and additional soil testing be undertaken. The report concluded that the site is considered to be suitable for the proposed development by appropriate remediation or management of contamination, which should be conducted in accordance with a Remedial Action Plan (RAP).

The report also noted that due to the age of the structures, it is likely that asbestos and other potentially hazardous materials may be present and should be assessed prior to demolition in accordance with the relevant legislation.

In light of the above, it was requested that a Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) be prepared and submitted to Council for consideration. A RAP was prepared by Douglas and Partners and submitted to Council on 15 September 2018. The RAP

was referred to Council's Environmental Health Officer for review who raised no objection, subject to conditions of consent.

• **Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment.**

The site is not located within the Georges River Catchment, therefore no further assessment against the provisions of this policy is required.

• **Canterbury Local Environmental Plan 2012.**

The subject site is zoned R2 - Low Density Residential under CLEP 2012. The proposal is compared to the relevant controls as outlined below:

Standard	Requirement	Proposed	Complies
Part 2 – Permitted or Prohibited Development			
2.3 - Zoning	R2 Low Density Residential Objectives: <ul style="list-style-type: none"> To provide for the housing needs of the community within a low density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	The proposed development is defined as a "boarding house". Boarding houses are permitted within the R2 zone. The proposal generally accords with the objectives of the zone. However the proposal fails to achieve an appropriate low density environment as set by the suite of planning controls particularly through proposed variations to the FSR and landscape standards.	Permissible but does not meet the objectives of the zone.
2.7 Demolition	The demolition of a building or work may be carried out only with development consent.	Approval is sought for the demolition of all existing structures on the subject site. A demolition plan has been submitted to Council.	Yes
Part 4 – Principal Development Standards			
4.1 - Minimum Subdivision	Minimum 460sqm.	The proposal consists of amalgamating the three existing allotments. The amalgamated site comprises a total site area of 1,801.9sqm, which complies with the 460sqm minimum.	Yes
4.3 – Height of Buildings	8.5m	Building A: 9.015m (12.235-3.22RL). Building B: 8.855m (12.235-3.38RL).	No – refer to comment [1] below

4.4 - Floor Space Ratio (FSR)	0.5:1	<p>A maximum 0.5:1 floor space ratio control applies to the site (dwellings, semi-detached and dual occupancies). The development comprises a total GFA of 926.5sqm which equates to an FSR of 0.51:1, which does not comply with the 0.5:1 FSR for the residential accommodation permitted in the zone.</p> <p>The applicant believes the design complies with the maximum FSR provision and therefore no clause 4.6 variation statement has been prepared for this variation.</p>	No
Part 5 – Miscellaneous Provisions			
5.10 (5) - Heritage Conservation	The consent authority may, before granting consent to any development on land that is within the vicinity of a heritage item or heritage conservation area, require a heritage management document to be prepared to assess the extent to which the development would affect the heritage significance of the heritage item/conservation area.	The site is not listed as a heritage item, nor is it in close proximity to a heritage item or conservation area. Council's Heritage Advisor had no comment on the application.	Yes
Part 6 – Local Provisions			
6.1 - Acid Sulfate Soils	<p>(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.</p> <p>(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance</p>	<p>The site is located on Class 5 Acid Sulfate Soils and is located within 500m of Class 1 and 2 Acid Sulfate Soils.</p> <p>The site is below 5m AHD. Minor fill and excavation works will be undertaken across the site (as shown on Drawing 2504 submitted).</p> <p>A preliminary assessment of acid sulfate soils report was prepared by Douglas Partners and submitted as part of the application. The report</p>	Yes

	with the Acid Sulfate Soils Manual and has been provided to the consent authority.	concluded that an Acid Sulfate Soils Management Plan is not required if screw piles are used and the beams do not extend to the water table. The Applicant confirmed that screw piles are used. The Applicant confirmed that the concrete downtum/beam is located above the screw piles and therefore the beam will not extend below the water table. This is shown on Drawing No. 3013. Should the application be recommended for approval, this design could be imposed via condition of consent.	
6.2 Earthworks	<p>-(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:</p> <p>(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,</p> <p>(b) the effect of the development on the likely future use or redevelopment of the land,</p> <p>(c) the quality of the fill or the soil to be excavated, or both,</p> <p>(d) the effect of the development on the existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p>	<p>The proposal comprises minor earthworks. A Geotechnical Investigation Report (prepared by Douglas Partners Pty Ltd dated 28 March 2018 was submitted with the application. The report contains recommendations with regards to site preparation, foundation systems, excavation, retaining walls, ground water, pavement design, seismic design and site maintenance. The recommendations would form conditions of consent, should the application be recommended for approval. Furthermore, Council's Environmental Health Officer reviewed the report and raised no objection to the recommendations of the Geotechnical Investigation Report.</p>	Yes

	<p>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</p> <p>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p>		
6.3 - Flood Planning	<p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <p>(a) is compatible with the flood hazard of the land, and</p> <p>(b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and</p> <p>(c) incorporates appropriate measures to manage risk to life from flood, and</p> <p>(d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</p> <p>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</p>	The site is located within a Flood Planning Area. The application was referred to Council's Development Engineer who raised no objection to the revised design in terms of flood planning.	Yes
6.4 - Stormwater Management	<p>(1) The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native</p>	<p>The development incorporates deep soil zones and permeable services.</p> <p>Council's Development Engineer raises no issues with</p>	Yes

	<p>bushland and receiving waters.</p> <p>(2) This clause applies to all land in residential, business and industrial zones.</p> <p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <p>(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and</p> <p>(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and</p> <p>(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.</p>	the proposed stormwater management.	
6.6 - Essential Services	<p>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:</p> <p>(a) the supply of water,</p> <p>(b) the supply of electricity,</p> <p>(c) the disposal and management of sewage,</p> <p>(d) stormwater drainage or on-site conservation,</p>	<p>The site is adequately serviced in terms of water, electricity and sewage.</p> <p>In terms of stormwater drainage and vehicular access, the development has indicated adequate provision of stormwater drainage and vehicular access.</p>	Yes

	(e) suitable vehicular access.		
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[1] Clause 4.3 – Building Height (CLEP 2012)

The proposal complies with the development standards contained in CLEP 2012, with the exception of Clause 4.3 – Height of Buildings and Clause 4.4 – Floor Space Ratio (FSR).

Pursuant to Clause 4.6 of CLEP 2012, the applicant has made a submission seeking a variation to the provisions contained in Clause 4.3 of CLEP 2012. No submission has been made to the provisions contained in Clause 4.4 of CLEP 2012, as the Applicant considers the design to comply with the maximum FSR development standard. The Clause 4.6 submission details the extent of the building height variation as follows:

- **Maximum Building Height pursuant to CLEP 2012:** 8.5m.
- **Front Building (Building A):** Maximum 9.065m proposed which equates to 0.565m or 6.6% degree of contravention. Based on Council's calculation, a maximum of 9.015m is proposed which equates to 0.515m or 6.06% degree of contravention.
- **Rear Building (Building B):** Maximum 8.855m proposed which equates to 0.355m or 4.2% degree of contravention. Council agrees with this calculation.

An assessment of the development against Clauses 4.6(2), (3) and (4) of CLEP 2012, including extracts from the applicant's submission, is provided below:

1. ***The objectives of this clause are as follows:***
 - a. *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - b. *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
2. ***Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.***

Comment:

The development standard to be varied is Clause 4.3 – Height of Buildings, which is not expressly excluded from the operation of Clause 4.6.

3. ***Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:***

1. ***that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,***

The Applicant's written request states that compliance with the maximum height of building standard is unnecessary or unreasonable as follows:

- *The site is affected by a 100 year average recurrence interval (ARI) level of RL4.0...Council's Flood Management – Cooks River policy requires that a 500mm freeboard be adopted above the 100 year ARI level.*
- *The height limit of 8.5m clearly intends to permit the construction of a two storey dwelling under a pitched roof, as can be seen in recently constructed detached dwellings in the area.*
- *The proposed buildings are two storeys in height and the 0.565m exceedance of the building height standard directly relates to the requirement of the finished floor level to be 0.62m to 1.4m above the existing ground level to satisfy the 100 year ARL level.*
- *Furthermore, a pitched roof form has been proposed, so as to result in a built form and character which is consistent with the character of development in the locality.*
- *... A flat roof form could be proposed, in order to achieve numerical compliance, however, this would result in a poor urban design and streetscape outcome in a locality where pitched roof forms are prevalent.*
- *In addition... the floor to ceiling heights are 2.7m which is in excess of the 2.4m floor to ceiling height of a typical dwelling house, ensuring the boarding rooms have a good level of internal amenity.*

Comment:

Council concurs with the justification provided by the Applicant. In addition to the above, it is noted that further compliance could be achieved through locating the buildings closer to the southern boundary. However, this design would result in a non-compliance with the minimum side setback controls specified within Canterbury Development Control Plan 2012, which in turn would likely result in additional privacy and overshadowing impacts to the existing properties to the south, which is not acceptable. Furthermore, the proposed design (which generally complies with the required setbacks) results in a design that is more in keeping with the character of the locality.

In light of the above, it is considered that compliance with the development standard is unnecessary or unreasonable in the circumstances of this case.

2. ***that there are sufficient environmental planning grounds to justify contravening the development standard.***

The Applicant's written request gives the following reasons that there are sufficient 'environmental planning grounds' to justify contravening the development standard:

- *The variation proposed is a direct result of the site being flood prone land and the ground floor of Building A having to be raised above the 100 year ARI flood level by between 0.62m and 1.4m.*
- *Without raising of the ground floor level, there would be potential risk to life and property, which would be an unacceptable environmental planning outcome.*
- *The numerical breach is less than the required increase in floor level.*

Comment:

Council generally concurs with the justification provided by the Applicant. In addition to the matters raised by the Applicant, it is noted that the additional height proposed beyond the maximum building height standard does not result in any substantially additional privacy impacts. As outlined within Council's assessment against the relevant controls later within this report, the design complies with the privacy provisions contained within CDCP 2012.

In light of the above, there are sufficient environmental planning grounds to support the proposed variation to building height.

- 4. *Development consent must not be granted for development that contravenes a development standard unless:***
- a. *the consent authority is satisfied that:***
 - i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and***

Comment:

As detailed above, the written request has adequately addressed the matters required in subclause 3 above.

- ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and***

The objectives for Building Height seek:

- a) *to establish and maintain the desirable attributes and character of an area,*
- b) *to minimise overshadowing and ensure there is a desired level of solar access and public open space,*
- c) *to support building design that contributes positively to the streetscape and visual amenity of an area,*

d) to reinforce important road frontages in specific localities.

Comment:

It is considered that the proposal is consistent with the objectives of the development standard for the following reasons:

- The development maintains a two storey presentation which is consistent with the intent of the 8.5m maximum building height standard.
- The proposed development comprises an increased setback to the southern boundary, greater than the minimum setback requirements specified within CDCP 2012. It is noted that the design does not comply with the provisions relating to minimum solar access to neighbouring properties. However, as outlined later within this report, it is not considered to be a direct result of the proposed height of the development.
- The two storey building with pitched roof design combined with the proposed landscaped front setback results in a design that contributes positively to the character of the area, the streetscape and visual amenity of the area.

The objectives of the R3 Medium Density Residential Zone seek:

- a) To provide for the housing needs of the community within a low density residential environment.*
- b) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

For the reasons outlined above, the proposed maximum building height is considered acceptable in the circumstances and does not result in an inconsistency with the R3 zone objectives.

However, the proposed development as a whole does not meet the relevant objective of the zone as given the proposed non-compliance with the maximum floor space ratio development standard and other design controls specified within CDCP 2012 (as discussed later within this report), the proposed design is not considered to be in keeping with the low density residential environment.

Despite the proposed variation to the height of buildings development standard being consistent with the objectives of the zone and development standard, the proposal is not supported as a whole. Support of a design that does not comply with the maximum FSR provision and other design controls as outlined within this report would not be in the public interest.

- b. the concurrence of the Secretary has been obtained.*

Comment:

The concurrence of the Secretary is assumed having regard to previous advice received from the Department of Planning and Environment in Circular PS 18-003.

Conclusion

As outlined above, it is considered that there are sufficient environmental planning grounds to justify a contravention to the building height development standard, in this instance.

For the reasons outlined above, it is considered that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the development remains an appropriate built form outcome for the site, despite the contravention to the development standard.

With regard to the above, it is considered appropriate in this instance to support the submission under Clause 4.6 of CLEP 2012 to permit the proposed building height variation. Notwithstanding this, Council cannot support the proposal as no clause 4.6 variation statement has been provided for the proposed variation to the FSR development standard.

- **Canterbury Development Control Plan 2012 (CDCP 2012)**

The proposal compares to CDCP 2012 as follows:

B1 – Transport and Parking

The parking requirements outlined within the ARH SEPP apply to the site. These have been considered earlier within this report. The plans were referred to Council's Team Leader – Traffic to review the access and car park layout. Council's, Team Leader – Traffic raised the following concerns regarding the current design:

- The accessible parking spaces do not comply with AS 2890.6 Figure 2.2.
- The dimensions of the bicycle spaces (designated bicycle envelope) need to comply with AS2890.3:2015 Figure 2.1.
- The swept paths submitted indicate a conflict between vehicles and landscaping elements at the access driveway and passing bay.
- The passing bay does not meet the relevant Australian Standards.

The Applicant was provided the opportunity to address the abovementioned concerns as they were outlined within Council's letter dated 21 December 2018. These matters were not adequately addressed within the information received in response to Council's letter.

B2 – Landscaping and B3 – Tree Preservation

The application was referred to Council's Landscape Architect who raised the following concern with the current design:

- The landscape plan submitted was not drawn by a qualified landscape architect or a qualified landscape consultant as specified within Part B2.2 of CDCP 2012.
- The communal open space area is considered to provide an unintegrated design that does not utilise the whole space. Facilities provided within the communal open spaces should be for a range of age groups incorporating some of the following elements: shading areas, seating for individuals or groups, tables and chairs, barbecue areas, play areas or communal gardens.
- More native planting is to be incorporated into the design to provide shade to car park spaces as well as the communal open space in accordance with Part B2.5.1 of CDCP 2012.
- The planting palette should be expanded to include a layering of planting to the garden beds with a variety of groundcovers, shrubs and trees to provide greater interest with regard to height, screening and texture that will provide an attractive landscape for residents.
- Brick or timber edges are to be provided to all garden bed areas to prevent lawn encroaching onto garden plating pursuant to Part B2.3.5 of CDCP 2012.

The Applicant was provided the opportunity to address the abovementioned concerns as they were outlined within Council's letter dated 21 December 2018. These matters were not adequately addressed within the information received in response to Council's letter.

In regards to trees, it is noted that the proposed development is located within the Tree Protection Zone of some trees located within the adjoining park. This matter has been reviewed by Council's Landscape Architect who raised no concern given the development is located within the 10% allowable encroachment area of the affected trees.

B4 – Accessible and Adaptable Design

A BCA Assessment Report prepared by Blackett Maguire and Goldsmith dated February 2018 was submitted as part of the application. The report states that no assessment against the Disability Discrimination Act (DDA) 1992 was undertaken. Part B4.2 (C1 and C3) requires development to comply with the DDA. A statement of consistency against the DDA prepared by a suitably qualified person is to prepare such statement. This was therefore requested from the applicant.

The applicant submitted an access report prepared by Wall Design + Consulting. The assessment concluded that the design meets the relevant disability standards. The

recommendations of the report could be conditioned, should the application be supported.

B5 – Stormwater and Flood Management

The application was referred to Council's Development Engineer who raised no concern with the current design in terms of stormwater and flood management.

B7 – Crime Prevention and Safety

An assessment of the proposed design against the relevant provisions of Part B7 is provided in the table below:

Standard	Requirement	Proposal	Compliance
Crime Prevention Through Environmental Design	Avoid blind corners	The development has been designed to avoid blind corners.	Yes
	Provide natural surveillance for communal and public areas.	The design incorporates windows to habitable rooms. These windows are orientated towards the street as well as internal communal areas and the adjoining park (where appropriate) to provide for natural surveillance.	Yes
	Provide clearly visible entries.	The proposed entry points are located in prominent positions and allow users to see in before entering through the inclusion of glass either side of the door frame.	Yes
	Design the fence to maximise natural surveillance from the street to the building.	The front fence consists of a low, clad masonry wall of between 0.8m and 1.2m in height. This height is not considered to impact of surveillance in and out of the site.	Yes
	Avoid landscaping that obstructs natural surveillance.	The proposed landscaping does not obstruct natural	Yes

		surveillance.	
	Ensure buildings are clearly identified by street numbers.	This requirement can be enforced via condition of consent, should the application be supported.	Yes
	Use materials that reduce the opportunity for vandalism.	This requirement can be enforced via condition of consent, should the application be supported.	Yes
	Provide an appropriate level of security for individual dwellings and communal areas through use of intercoms, self closing doors and signage.	This requirement can be enforced via condition of consent, should the application be supported.	Yes

B9 – Waste

The application was referred to Council's Project Officer – Resource Recovery who raised no concern with the current design.

C1 – Dwelling Houses and Outbuildings

It should be noted that the CDCP 2012 does not provide criteria for the assessment of boarding house applications, as the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP) is the relevant document in this regard. However the ARH SEPP does not contain controls with regard to built form, setbacks and the like. With this in mind it is considered that the residential dwelling controls contained within Part C1 of CDCP should be used as a guide to ensure that development is consistent with the future desired character of the area.

The development compares to the relevant dwelling provisions contained within the CDCP 2012 as follows:

Standard	Requirement	Proposal	Compliance
Part C1.2 – Site Planning			
Minimum lot size and frontage	Primary Street Frontage - 15m	25.6m	Yes
	Internal and battle-axe blocks and lots with irregular dimensions must satisfy the objectives of CDCP 2012.	The development comprises the consolidation of the three existing lots into one lot. The rear dwelling will not be	N/A

		subdivided into its own allotment and therefore is not considered a battle-axe block.	
	Minimum width of access corridors servicing battle-axe lots is 3m for single lot.	Internal driveway min 3.5m.	Yes
	The access corridor must be constructed in concrete, be unobtrusive in colour and be designed to enable vehicles to enter and exit in a forward direction.	The requirement for the driveway to be constructed in concrete can be conditioned. The design of the car parking area allows for vehicles to enter and exit in a forward direction.	Yes
Landscaping	A minimum 25% of the site area is to be deep soil area	248sqm of deep soil area is provided which equates to approximately 14% of total site area.	No
	Deep soil areas are to have a minimum 2.5m dimension.	The deep soil area calculation includes area that have a minimum 2.5m dimension.	Yes
	For dwelling houses on lots with street frontages greater than 12.5m, 50% of deep soil area should be located adjacent to the rear boundary.	The design does not meet the minimum deep soil area requirement and therefore this control is not met. Notwithstanding, there is some merit to vary the requirement for 50% of the deep soil to be provided along the rear boundary, in this instance. But given the design does not meet the minimum deep soil area requirement, variation to this aspect of the control was not considered.	No

Layout and Orientation	Orientate development to maximise solar access and natural lighting	The development has been orientated to the north as much as practicable to maximise solar access and natural lighting.	Yes
	Site the development to avoid casting shadows onto neighbouring dwelling's primary living area, private open space and solar cells.	<p>The development is setback minimum 3.5m from the southern side boundaries to avoid casting shadows into the neighbouring property located to the south.</p> <p>As discussed later within this report, the design does not maintain adequate solar access to the private open space of the dwelling that directly adjoins the subject site to the south (24 Wardell Road).</p>	No
	Site new development and private open space to avoid existing shadows cast from nearby buildings	The site is located to the north of adjoining properties and is therefore not impacted by shadows cast by nearby buildings.	Yes
Height	Maximum 2 storey built form	Max 2 storey built form.	Yes
	Max 7m external wall height	<p>Max 7.4m along north-western elevation of building A and max 6.4m along north-western elevation of building B.</p> <p>This is considered acceptable in this instance given the additional finished floor level required to satisfy flood requirements specified by Council's</p>	No – however acceptable in this instance.

		Development Engineer.	
	Finished ground floor level is not to exceed 1m above natural ground level	<p>Building A: The finished ground floor level of the building along the north-western elevation (front façade) comprises a maximum FFL of 1.46m.</p> <p>This is considered acceptable in this instance given the additional finished floor level required to satisfy flood requirements specified by Council's Development Engineer.</p> <p>Building B: The finished ground floor level is under 1m.</p>	No – however acceptable in this instance.
	Walls that enclose sub-floor area, max 1m.	<p>The walls that enclose the sub-floor area at the front of Building A is max 1.46m above existing natural ground level.</p> <p>The walls that enclose the sub-floor area for Building B are less than 1m.</p> <p>Council's Development Engineer raises no concern regarding the structural integrity of this design based on the footing details provided.</p>	No – however acceptable in this instance.
	Retaining walls along any boundary are not to exceed 1m.	Retaining walls along boundary do not exceed 1m.	Yes
	Max 1m cut below ground level where it will extend beyond an exterior wall of the	<1m cut.	Yes

	building		
	Max 600mm fill above ground level where it would extend beyond an exterior wall of a building	<p>Max 1.46m fill restricted to the Building A (particularly the northern corner and entrance to the building).</p> <p>This is considered acceptable in this instance given the additional finished floor level required to satisfy flood requirements specified by Council's Development Engineer.</p> <p>Council's Development Engineer raises no concern regarding the structural integrity of this design based on the footing details provided.</p>	No – however acceptable in this instance.
Setbacks	Front: Min 9m for development along a major road	<p>Min 9m.</p> <p>Note: The red 9m setback line shown on the floor plans is incorrect – the setback is to be taken at 90degrees from the property boundary. Subsequently, the building complies rather than varies the 9m setback as shown on the plans.</p>	Yes
	Side: Min 1m	<p>South: Min 3.5m</p> <p>North: Nil (Manager's private open space). This variation is considered acceptable in this instance given the site adjoins a park to the north. On this basis, and through the incorporation of landscaping and</p>	Yes No – however acceptable in this instance.

		fencing along the northern boundary, the non-compliance will not result in any significant privacy concerns.	
	Rear: Min 6m	Building (balconies): 18m	Yes
Building Separation	The top storey of any two storey building should be designed, as a series of pavilion elements.	The top storey is designed as a series of pavilion elements.	Yes
	Pavilion elements shall have a depth between 10-15m.	The pavilion elements have a depth of approx. 12m.	Yes
	Articulate pavilion elements by an additional side boundary setback, and identified by setback roofs.	The pavilion elements are setback by virtue of the angle of the roof.	Yes
Building Design	Entries to residential dwellings must be clearly identifiable.	Entries to the residential dwellings are clearly identifiable.	Yes
	Avoid long flat walls along street frontages - stagger the wall alignment with a step of at least 0.5m for residential buildings.	The facades of each building comprise staggered wall elements through the incorporation of Juliet balconies, recesses as well as through an increased building footprint over the main building entry point. However, as outlined below, the repetitive nature of the design coupled with the lack of materials and length of the facades, the current design still presents as a flat façade as well as presents as a residential flat building, which is prohibited in the zone (refer to Figure 4 above).	No
	Incorporate	Additional contrasting	No

	contrasting elements in the façade	<p>elements could be incorporated into the façade to improve the presentation, such as different materials, different sized windows and less repetitive balconies.</p> <p>The comparison provided in the response by SJB and the architect, is a single dwelling that has a front façade of approximately 10m, which is nearly half of the subject site. Furthermore, the dwelling at 27 Wardell provides greater setback elements and use of windows etc.</p> <p>The Applicant was provided the opportunity to address the abovementioned concerns as they were outlined within Council's letter dated 21 December 2018. These matters were not adequately addressed within the information received in response to Council's letter.</p>	
Roof Design	Pitched roofs must not exceed a pitch of 30 degrees	Roof comprises 15 degree pitch	Yes
Solar Access to Neighbouring Development	Proposed development must retain a min of 2 hours of sunlight between 9am-3pm on 21 June to internal living areas and 50% private open space.	<p>24 Wardell Road:</p> <ul style="list-style-type: none"> - Proposed development will not overshadow photovoltaic panels on this dwelling. - The proposal does not impact the northern windows 	No

		<p>from 11am-3pm.</p> <ul style="list-style-type: none"> - Less than 50% of the rear POS receives solar access for minimum 2 hours and therefore does not comply. It is noted that majority of the overshadowing caused by the proposal occurs between 9am-midday. - It is acknowledged that the proposed development comprises an increased setback is provided to the southern boundary to minimise overshadowing impacts. - However, variation to this control cannot be considered acceptable in this instance given the design exceeds the maximum FSR standard permitted for the site, which is not considered appropriate and likely results in further overshadowing impacts to that of a compliant design. <p>189 Riverview Road:</p> <ul style="list-style-type: none"> - Survey submitted shows no windows to rear garage. - Proposal does not overshadow principle dwelling. 	Yes
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		<ul style="list-style-type: none"> - Rear POS receives 4 hours of solar access to at least 50% of the rear POS. <p>187 Riverview Road:</p> <ul style="list-style-type: none"> - Survey submitted shows no windows to rear garage. - Proposal does not overshadow principle dwelling. - Proposal does not overshadow photovoltaic panels on this dwelling. - Rear POS receives 3 hours of solar access to at least 50% of the rear POS. <p>189 Riverview Road:</p> <ul style="list-style-type: none"> - Proposal does not result in any additional overshadowing to the north-western window of the rear garage. - Proposal does not overshadow principle dwelling. - Rear POS receives 6 hours of solar access to at least 50% of the rear POS. 	Yes
	Sunlight to solar hot water systems must receive at least 2 hours solar access between 9am-3pm on 21 June.	The proposal will not impact on the solar hot water systems located on adjoining sites (24 Wardell Road and 187 Riverview Road).	Yes
	Clothes drying areas on adjoining properties must receive a minimum of 2 of sunlight on 21	As outlined above, the proposal does not retain a minimum of 2 hours solar access to the rear private open	No

	June	space of the adjoining property at 24 Wardell Road on 21 June. The clothes drying area at the rear of Wardell Road is already impacted by the overshadowing cast by the existing boundary fence. The proposed development results in further overshadowing of this area, which is not considered acceptable in this instance.	
Visual Privacy	Locate and orient new development to maximise visual privacy between buildings on and adjacent to the site.	An appropriate level of privacy is maintained to the adjoining properties to the south. This is achieved through the proposed design not comprising any habitable room windows along the southern elevations.	Yes
	Minimise overlooking of rooms and private open spaces through providing adequate separation between buildings and orientating windows away from living and private open space areas.	Furthermore, the proposed balconies are orientated to the east or west, away from the adjoining residential properties to the south. The proposed balconies are also suitably setback (minimum 4.2m) from the southern boundary. Furthermore, the RLs of the driveway and communal open space are lower than or relatively equal to the existing natural ground levels of the adjoining properties to the south. Therefore, the proposed cut and fill throughout the subject site will not result in	

		any additional overlooking opportunities into adjoin residential properties.	
Acoustic Privacy	Protect sensitive rooms from likely noise sources	An Acoustic Assessment report prepared by Acoustic Logic was submitted as part of the DA. The report concludes that, through incorporating the recommendations of the acoustic assessment, the proposed design provides for a suitable level of acoustic privacy to future residents of the site as well as maintains a suitable level of acoustic privacy to existing residents of adjoining properties. Should the application be supported, the recommendations of the acoustic report could be incorporated into any consent. Furthermore, Council's Environmental Health Officer reviewed the acoustic report and raised no objection.	Yes – via condition of consent should the application be supported.
	Bedroom windows are to be screened from pedestrian pathways.		
	Screen balconies or windows for living rooms or bedrooms that would face a driveway		
	Address all requirement in the Department of Planning's 'Development Near Rail Corridors and Busy Roads – Interim Guideline 2008'.		
Fences	Front fences: max 1.2m in height.	Front fence is max 1.2m in height.	Yes – via condition of consent should the application be supported.
	Side fences: max 1.8m in height.	Max 1.8m high fences along northern and eastern boundaries. These fences are proposed to be metal palisade with planting. Should the application be supported, a condition of consent	Yes – via condition of consent should the application be supported.

		<p>would be imposed to specify that such fencing to be constructed using solid material to maintain adequate privacy to future occupants of the site as well as users of the adjoining park.</p> <p>The existing fence along the southern boundary is to remain as per existing.</p>	
Building Services	All letterboxes are to meet AS.	This requirement can be enforced via condition of consent.	Yes – via condition of consent should the application be supported.
	Integrate systems and services into the design of the development.	<p>The proposal does not incorporate any substation or fire hydrant to support the development. Should the application be supported, suitable conditions could be imposed to ensure if such services are required at construction certificate stage, they are to be integrated within the design of the development and are not to impact on the streetscape appearance of the site.</p> <p>All other services and systems are integrated within the design of the development.</p>	Yes – via condition of consent should the application be supported.

- Other Matters**

State Transit Authority

The proposal involves relocating the existing bus stop located along the frontage of the site. Subsequently, the application was forwarded to State Transit Authority (STA) for comment. Based on written correspondence received from STA on 5 June 2018, they raise no issue

subject to the following conditions and assessment:

The Applicant is to pay or relocate the associated post and bus stop posts.

This may be an opportunity for Council to have the Applicant pay and install concrete pad and tactiles

.

Maybe check if the bus zone encroaches on the painted medium island for passing vehicles.

The above-mentioned comments were referred onto Council's Traffic department. As noted earlier within this report, Council's Team Leader – Traffic raised no concern regarding traffic impacts. The matters of concern still outstanding relate to the parking layout within the subject site.

Plan Of Management

A Plan of Management (PoM) has been submitted as part of the application. The PoM outlines who is responsible for the management of the boarding house and their responsible duties, measures to mitigate potential impacts on adjoining residences, where house rules are to be displayed, fire safety measures, waste management and safety and security measures. Council's Environmental Health Officer has reviewed the PoM and raised no concern.

View Loss

Some submissions received raised concern regarding loss of existing views to Beaman Park located to the north and east of the site. The application has been considered in terms of the "views- general principles" Planning Principle. Case Law does not determine views of the locality, airport, parks or suburbs as being 'iconic' and therefore highly regarded as opposed to views of major landmarks (i.e. the city/opera house/harbour). Furthermore, given these views to the park are to the side (the north) of the development, they are harder to maintain than views from the front or rear of a development. On this basis, obstruction of existing views enjoyed by residents in adjoining properties (particularly those to the south), would be hard to avoid, given the planning controls relating to the site and orientation of the site. In this instance, and given the type of views currently enjoyed (park/locality), the obstruction caused by the proposed development is considered acceptable.

Canterbury Development Contributions Plan 2013.

Canterbury Development Contributions Plan 2013 applies to the site. However, given the application is recommended for refusal, the contributions payable has not been calculated.

Planning Agreements [section 4.15(1)(a)(iia)]

There are no planning agreements applicable to the proposed development.

The Regulations [section 4.15(1)(a)(iv)]

The proposed development is consistent with the relevant provisions of the Environmental Planning and Assessment Regulation, 2000.

Any Coastal Zone Management Plan [section 4.15(1)(a)(v)]

There is no coastal zone management plan that applies to the subject site.

The Likely Impacts of the Development [section 4.15(1)(b)]

The key potential impacts of the development have been discussed through-out this report. Apart from those matters already addressed, the following likely impacts are considered:

National Construction Code

The development application has been reviewed and assessed by Council's Building Officer who has raised no objection to the proposal subject to appropriate conditions being imposed, including that full compliance with the National Construction Code is to be achieved.

Proposed excavation works

The proposed development involves excavation and construction works in close proximity to property boundaries and neighbouring properties. Should the application be recommended for approval, relevant conditions requiring the applicant to provide a dilapidation report for the adjoining properties, prior to the issue of the Construction Certificate could be included on any consent issued. Should any damage to adjoining properties result from the proposed excavation works at the subject site, the applicant would be required to rectify all damages.

Sediment and Erosion Control

Standard conditions could be included regarding the installation and maintenance of the sediment and erosion control measures as part of the pre and during construction phase of the development, should the application be supported.

The development will involve excavation of part of the site to accommodate the development. Any excavated material not utilised elsewhere on the property, will require proper disposal and transport in accordance with the Waste Avoidance and Recovery Act, and the Protection of the Environment Operations Act. A condition will be imposed in this regard.

Suitability of the Site [section 4.15(1)(c)]

The application has been assessed under Section 4.15 of the Act, and as demonstrated throughout the body of this report, the application seeks variation to a number of planning

controls. A number of the variations sought are acceptable on merit, as outlined within the abovementioned assessment. However the proposed variations to the development standards relating to floor space ratio, building design, landscaping, as well as parking matters are not accepted. The Applicant has been provided the opportunity to address the abovementioned non-compliances but has not addressed them to the satisfaction of Council. The proposed variations are considered to represent an overdevelopment of the site and subsequently it is considered that the site is not suitable for the proposed development.

Submissions [section 4.15(1)(d)]

The development application was publically advertised for 21 days between 24 April – 16 May 2018 in accordance with Part A3 of CDCP 2012. A total of 14 unique submissions, proforma letters from 172 households and 2 petitions signed by a total of 182 persons were received. The matters raised within the submissions are discussed below:

There is insufficient parking provided on site to align with the amended parking provisions for boarding houses specified in the State Environmental Planning Policy (Affordable Rental Housing) 2009.

Comment

The design has been revised to comply with the minimum car parking requirements specified within the State Environmental Planning Policy (Affordable Rental Housing) 2009 (as amended).

A wider area of the locality should have been notified of the proposed development.

Comment

The application was publically advertised in accordance with Part A3 of the Canterbury Development Control Plan 2012 (CDCP 2012). The application was publically advertised in the local paper and adjoining residences directly impacted by the proposal were notified by letter. This is consistent with the requirements outlined within Part A3 of CDCP 2012.

The proposed development, in conjunction with surrounding land uses, result in adverse traffic impacts on the local street network.

Comment

Council's Team Leader – Traffic has reviewed the design from a traffic perspective and raises no concern.

There is no need for boarding house development in the locality.

Comment

The proposed boarding house is permitted in the R2 Low Density zone. This is not a planning consideration subject to Clause 4.15 of the Environmental Planning and Assessment Act 1979.

There is no requirement or reason to relocate the existing bus stop.

Comment

The existing bus stop is proposed to be relocated slightly to facilitate vehicular access to the subject site. The application was referred to the State Transit Authority (STA) for review. STA raised no concern to the proposed relocation of the existing bus stop, subject to conditions of consent should the application be supported.

Does the developer have a legal right to relocate the main sewer line and have they requested approval from the correct regulatory authority.

Comment

The applicant is able to relocate sewer mains and the like, subject to approval. Council's Development Engineer has reviewed the design and raises no concern. Notwithstanding this, the application is not recommended for approval. Furthermore, should the application be approved, the Applicant would need to obtain a S73 certificate from Sydney Water.

The development in scale, dominance, density, location and transient nature is not in keeping with the surrounding low density residential and recreational character or riverfront precinct.

Comment

Based on Council's assessment of the application, it is considered that the proposed design is inconsistent with the character of the locality. This forms part of the reason for refusal of the application.

The development is not in keeping with the streetscape or visual amenity of the heritage style area.

Comment

Based on Council's assessment of the application, it is considered that the proposed design is inconsistent with the character of the locality. This forms part of the reason for refusal of the application.

The design of the two buildings causes loss of privacy, views and sunlight to the surrounding residents and park visitors.

Comment

The design complies with the minimum building setback requirements to the southern boundary. Furthermore, the design does not comprise any windows to habitable rooms along the southern elevation of the building. The main building line also complies with the minimum setback requirements to the rear and northern boundary. Although habitable room windows are orientated towards the park, this is considered acceptable as it allows for passive surveillance of the park. In light of the above, the design is not considered to result in any substantial privacy impacts.

In terms of view loss, Case Law does not determine views of the locality, airport, parks or suburbs as being 'iconic' and therefore highly regarded as opposed to views of major landmarks (i.e. the city/opera house/harbour). Furthermore, given these views to the park are to the side (the north) of the development, they are harder to maintain than views from the front or rear of a development. On this basis, obstruction of existing views enjoyed by residents in adjoining properties (particularly those to the south), would be hard to avoid, given the planning controls relating to the site and orientation of the site. In this instance, and given the type of views currently enjoyed (park/locality), the obstruction caused by the proposed development is considered acceptable.

In terms of overshadowing, the design does not maintain a suitable level of solar access to all adjoining properties. This forms part of the reason for the recommended refusal of the application.

The proposed development exceeds the maximum building height development standard applicable to the site and is not in keeping with the surrounding area.

Comment

It is noted that the design does seek a minor variation to the maximum building height control permitted for the site. However, as outlined within the body of the report, the proposed variation is acceptable in this instance. Notwithstanding this, the design seeks variation to a number of other building design controls which is considered to result in a design that is inconsistent with the character of the area. This forms part of the reason for the recommended refusal of the application.

The type of development (studio apartments) is not in keeping with the affordable family homes in the area.

Comment

Boarding houses are a permitted land use in the subject R2 Low Density zoning of the site. Notwithstanding this, based on Council's assessment of the application, it is considered that the proposed design is inconsistent with the character of the locality. This forms part of the

reason for refusal of the application.

The heavy metal and asbestos contamination in the report is not adequately addressed.

Comment

The application was assessed against the relevant provisions of State Environmental Planning Policy 55 – Remediation of Land (SEPP 55). Throughout the assessment of the application, further information was requested from the Applicant to address the relevant requirements of SEPP 55. The development (as amended) satisfies the relevant requirements of SEPP 55. Furthermore, Council's Environmental Health Officer has reviewed the documentation submitted and raises no concern subject to conditions of consent, should the application be supported.

Transitory nature of population.

Comment

Boarding houses are a permitted land use in the subject R2 Low Density zoning of the site. The transitory nature of the population is not a planning consideration subject to Clause 4.15 of the Environmental Planning and Assessment Act 1979.

How is low cost housing defined?

Comment

Boarding houses are a type of affordable rental housing. Definitions relating to affordable housing is provided in the State Environmental Planning Policy (Affordable Rental Housing) 2009.

Over what period of time will the phased demolition occur.

Comment

The application was amended during the assessment process to remove the phased demolition component.

Will sufficient bins be provided for the tenants and where is the bin storage area located.

Comment

Council's Project Officer – Resource Recovery reviewed the application and raised no concern with the current design from a waste perspective.

The number of bins will result in further traffic impacts when being collected.

Comment

Council's Project Officer – Resource Recovery and Team Leader – Traffic reviewed the application and raised no concern with the current design from a waste and traffic perspective.

What treatment is being provided on the boundary of the park to ensure privacy of park users.

Comment

Should the application be recommended for approval, a condition of consent would be incorporated to ensure a 1.8m solid fence is erected along the northern and eastern boundaries to provide adequate level of privacy to adjoining properties (including the park). Will the owner of the property oversee management of the property to remove any graffiti?

Comment

Should the application be supported, the Manager of the site would be responsible for the removal of any graffiti on the subject site.

Townhouses are more suited to this site.

Comment

Townhouse developments are prohibited on the subject site as they are prohibited in the R2 Low Density zone.

The development will devalue surrounding properties.

Comment

This is not a planning consideration subject to Clause 4.15 of the Environmental Planning and Assessment Act 1979.

The balconies of the development will directly overlook into the existing residential properties to the south of the site and their private open space areas.

Comment

The proposed balconies are orientated to the east or west, away from the adjoining residential properties to the south. The proposed balconies are also suitably setback (minimum 4.2m) from the southern boundary. On this basis, they are not considered to result

in any significant adverse privacy impacts to adjoining residential properties.

The development will overshadow the photovoltaic panels of adjoining properties.

Comment

Based on Council's assessment of the application, the proposed design will not overshadow the photovoltaic panels of adjoining properties.

The development will block current uninterrupted views of Beaman Park of adjoining properties.

Comment

Case Law does not determine views of the locality, airport, parks or suburbs as being 'iconic' and therefore highly regarded as opposed to views of major landmarks (i.e. the city/opera house/harbour). Furthermore, given these views to the park are to the side (the north) of the development, they are harder to maintain than views from the front or rear of a development. On this basis, obstruction of existing views enjoyed by residents in adjoining properties (particularly those to the south), would be hard to avoid, given the planning controls relating to the site and orientation of the site. In this instance and given the type of views currently enjoyed (park/locality), the obstruction caused by the proposed development is considered acceptable.

The number of expected residents at the site will result in adverse noise impacts on adjoining properties.

Comment

Boarding houses are a permitted land use in the subject R2 Low Density zoning of the site. At the time of the assessment of this application, there was no restriction to the number of lodgers that could reside in a boarding house development.

Light pollution during the night from external lighting will adversely impact adjoining properties.

Comment

Should the application be supported, suitable conditions of consent could be incorporated into the consent to ensure external lighting is managed appropriately to minimise impact on adjoining properties.

The studio rooms will be sold off as apartments at a later date which is inconsistent with the zone.

Comment

In order to be sold off, the rooms would be required to be subdivided. An application for this the type of subdivision required would not be supported with the current zoning of the site.

Will these apartments be available to rent by anyone in the community or are they private rooms for the nearby Islamic Centre?

Comment

This is not a planning consideration subject to Clause 4.15 of the Environmental Planning and Assessment Act 1979.

The development will result in further pedestrian safety impacts on the surrounding road network.

Comment

Council does not agree with this comment. Adequate pedestrian paths are provided along surrounding streetscapes to facilitate the safe travel of pedestrians within the locality.

Will access to the park be provided from the site. If so, this will result in further safety impacts as people will use the driveway as a catrack.

Comment

The design does not include private access to the park from the site.

Traffic lights should be installed at the roundabout to the south of the site to improve the traffic and safety issues occurring currently.

Comment

This is not a matter that is subject to the proposed application. Should this be a matter of concern, it is suggested that you contact Council's traffic department to discuss this matter.

Does the site comprise sufficient landscaping?

Comment

The design does not satisfy Council's deep soil landscaping requirements specified within Canterbury Development Control Plan 2012. This forms part of the reason for the recommended refusal of the application.

The location and type of driveway will adversely impact on adjoining properties as well as

traffic along Wardell Road.

Comment

Council's Team Leader – Traffic has reviewed the design from a traffic perspective and raises no concern with the location of the driveway.

Is the location of bin storage areas appropriate?

Comment

Council's Project Officer – Resource Recovery reviewed the application and raised no concern with the current design from a waste perspective.

The design results in adverse overshadowing impacts on adjoining properties.

Comment

The design does not maintain a suitable level of solar access to all adjoining properties. This forms part of the reason for the recommended refusal of the application.

The Public Interest [section 4.15(1)(e)]

The proposed development, in its current form, is considered to contravene the public interest. The proposed departures from the key planning controls will result in a design that is not in keeping with the current and future desired character of similar development within the locality.

It is important to note that during the assessment of the application, the following draft controls relating to boarding houses were exhibited including the following:

On 19 December 2018, public exhibition of proposed changes to the ARH SEPP concluded. The proposed amendment to the ARH SEPP provides for a new provision (Clause 30AA) that limits the number of boarding rooms in a boarding house development in the R2 zone to a maximum of 12 boarding rooms. This change was gazetted on 28 February 2019 and a savings provision was included. Therefore the proposal was not impacted by the change.

On 11 December 2018 – 1 February 2019 the planning proposal to introduce minimum frontage and site area requirements for boarding houses into CLEP as well as amendment to CDCP 2012 to incorporate boarding house controls was publically exhibited. Subsequently, a report was considered by Council on 26 March 2019 where it was resolved to adopt the planning proposal and that the amendments to CDCP 2012 come into force concurrently with the gazettal of CLEP 2012 in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000. It was also recommended that a savings and transitional provision be added to the planning proposal to apply to development applications that were made up until 1 February 2019 including those under appeal. Therefore the proposed changes do not apply to the subject application. Notwithstanding this, as outlined above, the design

has been considered against the building design controls outlined within Part C1 – Dwelling Houses and Outbuildings of CDCP 2012 to assist with the assessment for character and concludes that the development is not a suitable outcome for this site. This assessment is consistent with the draft boarding house CDCP 2012 controls.

CONCLUSION

The development application has been assessed pursuant to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979 and all relevant State Environmental Planning Policies, development control plan, codes and policies. As outlined within the body of the report, the current design seeks departure to a number of applicable planning controls which represents an overdevelopment of the site. Support of the departures proposed would result in a design that is inconsistent with the character envisaged for the locality.

The Applicant has been provided opportunities to amend the design to address the matters raised by Council. During each of the opportunities provided, extensions of time were also provided to the Applicant to address the concerns raised.

In light of the above, it is recommended that the application be refused.

RECOMMENDATION

That the development application be **REFUSED** for the following reasons:

1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the design fails to comply with the maximum floor space ratio development standard applicable to the site pursuant to Clause 29(1) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 and Clause 4.4 of Canterbury Local Environmental Plan 2012.
2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the design does not provide adequate landscape areas as required within Clause 29(2)(b) of the State Environmental Planning Policy (Affordable Rental Housing) 2009.
3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the design is incompatible with the character of the local area in accordance with Clause 30A of State Environmental Planning Policy (Affordable Rental Housing) 2009.
4. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the objectives of the R2 Low Density Zone outlined within Clause 2.3 of Canterbury Local Environmental Plan 2012.
5. The proposed development is unsatisfactory, pursuant to the provisions Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, as it does not comply with the objectives and controls of the Canterbury Development Control Plan 2012 (CDCP 2012) including:
 - a. Part B1 – Transport and Parking
The design of the parking area provided on site and access to such parking area does not comply with the relevant requirements.
 - b. Part B2 – Landscaping
The application was not accompanied by a landscaped plan prepared by qualified landscape architect. The communal open spaces facilities to be shared by a range of age groups. Furthermore, the design of the landscaped area and type of planting proposed to be planted is not suitable.
 - c. Part C1.2.4 – Landscaping
The design does not comply with the minimum deep soil area and location of deep soil area within the site.
 - d. C1.2.5 – Layout and Orientation
The design results in adverse overshadowing impacts on adjoining properties and therefore the design has not appropriately considered the layout and orientation of the site.
 - e. C1.4 – Building Design
The design does not meet the objectives of building design controls. The

repetitive nature of the Juliet balconies coupled with the lack of materials and finishes and length of the facades, the design is inconsistent with the character of similar development in the locality.

f. C1.5.1 – Solar Access and Overshadowing

The design fails to maintain a suitable level of solar access to adjoining residential properties.

6. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the communal living rooms incorporated within the design is not of sufficient size to cater for the number of lodgers proposed.
7. Having regard to the previous reasons noted above, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the design will result in adverse environmental and amenity impacts and therefore the site is not suitable for the proposed development.
8. Having regard to the previous reasons noted above, pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.

WE ALSO ADVISE

1. Our decision was made after consideration of the matters listed under Section 4.15 of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
2. If you are not satisfied with this determination, you may:
 - 2.1 Apply for a review of a determination under Section 8.2 of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of the receipt of this Notice of Determination.; or
 - 2.2 Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Section 8.7 of the Environmental Planning and Assessment Act 1979.

Canterbury Bankstown Local Planning Panel - 6 May 2019

ITEM 5	31-33 Isabel Street, Belmore
	Use of existing gymnasium for functions/social events associated with the Greek Orthodox Parish in addition to the current usage as gymnasium for the All Saints School.
FILE	DA-382/2015 – Roselands
ZONING	R3 Medium Density Residential
DATE OF LODGEMENT	27 August 2015
APPLICANT	Greek Orthodox Parish and Community of Belmore
OWNERS	Greek Orthodox Parish and Community of Belmore
ESTIMATED VALUE	Nil
AUTHOR	Planning

REPORT

The development application seeks consent for the use of the existing All Saints School gymnasium by the All Saints Greek Orthodox Parish (Church) for the additional purposes of functions associated with Church activities at the property known as 31-33 Isabel Street, Belmore (Lot 110 of DP 1143322).

The proposal seeks capacity for up to 250 persons including staff, with events to be held in the gymnasium generally outside of school hours. The proposal entails functions associated with Church celebrations including, but not limited to, Palm Sunday celebrations, Mother's and Father's Day dinner and New Year's Eve Church celebrations.

The proposed development does not include any alteration to the building nor seek any physical works.

The application was originally heard at the Canterbury Bankstown Local Planning Panel on 4 June 2018 with a recommendation for approval, subject to conditions. The Panel resolved to defer the application to *"enable legal advice be obtained regarding the permissibility issue as*

referred to in the panel assessment section, and the additional merit issues referred to in the panel assessment section to be addressed (subject to the resolution of the permissibility issues)." A copy of the previous report and panel assessment is provided in Attachment A and B for reference.

This is an addendum to the report considered at the Canterbury Bankstown Local Planning Panel on 4 June 2018.

A summary of the sequence of events following the Panel's deferral is provided below:

- Council (via email on 13 June 2018) requested that the Applicant obtain legal advice to address the permissibility concern raised as well as an updated Plan of Management to address the matters outlined within pages 6 and 7 of the Panel assessment report. It was requested that the information be provided to Council by 11 July 2018.
- On 28 August 2018, the Applicant submitted the legal advice requested (via email), 7 weeks after the due date. Hard copies were submitted to Council on 19 September 2018. The updated Plan of Management was not provided as part of the information submitted to Council.
- Council engaged an external legal firm to review the legal advice provided by the Applicant.
- On 4 October 2018, a reminder email was sent to the Applicant requesting receipt of the updated Plan of Management as per Council's email dated 13 June 2018. The information was to be submitted to Council by 19 October 2018. The amended Plan of Management was not received by Council despite the Applicant confirming via email on 19 October 2018 that the document would be submitted on this date.
- On 20 November 2018, Council requested further information from the Applicant (via email) to address matters raised in the legal advice received from the external firm engaged by Council. It was requested that the application be amended to address the following and the information be submitted by 11 December 2018:
 - o *Consent is formally sought to extend the **place of public worship** use across the Property as a whole.*
 - o *Demonstrate that the intended activities to be carried out in the gym include religious worship and support a conclusion that the proposal is correctly classified as **place of public worship**. It was suggested that the Applicant specifically advise how each of the 12 events proposed (in a calendar year) comprises religious worship.*
 - o *The Statement of Environmental Effects and Plan of Management be revised to address the abovementioned points. The Plan of Management is also to be revised to include the matters raised in Council's email dated 13 June 2018.*
- On 11 December 2018, the Applicant requested an extension to submit the above-mentioned information until close of business 18 December 2018. The extension was granted by Council.
- On 31 December 2018, the Applicant sought a further extension until early February to provide the additional information on the basis that they were obtaining further legal advice and the difficulty of obtaining such advice within the holiday period. An extension until 8 February 2019 was provided to the Applicant.
- An email reminding the Applicant of the 8 February 2019 deadline was sent on 5 February 2019, to which the Applicant confirmed the information would be submitted by the end of the week (i.e by 8 February).

- Council wrote to the Applicant on 12 and 13 February 2019 noting that the information had not been received, despite the Applicant advising it would be.
- On 20 February 2019, the Applicant submitted the additional legal advice obtained and an updated Plan of Management, approximately 2 months after the initial due date.
- Upon review, Council determined that the information submitted on 20 February 2019 was still deficient of the following documentation requested by the Panel and reiterated in Council's emails to the Applicant dated 13 June 2018 and 20 November 2018:
 - o A document from the Applicant formally seeking to extend the place of public worship use across the Property as a whole. This was requested in light of the legal advice received by Council. This document was required to amend the application and subsequently re-advertise the DA.
 - o The Plan of Management submitted did not address all the matters requested within Council's email dated 13 June 2018 (and reiterated in Council's email dated 20 November). Furthermore, the Plan of Management comprised inconsistent information regarding the number of events proposed.
 - o An updated Statement of Environmental Effects to reflect the amended proposal. This document was required to amend the application and subsequently re-advertise the DA.

As outlined above the Applicant has been provided a number of opportunities to address the matters raised by the Panel at the 4 June 2018 meeting. Despite the extensive time and number of opportunities provided to the Applicant, the information submitted to date is insufficient to enable Council to undertake a detailed and thorough assessment of the application. On this basis, the application is recommended for refusal based on insufficient information.

POLICY IMPACT

This matter has no direct policy implications.

FINANCIAL IMPACT

This matter has no direct financial implications.

RECOMMENDATION

It is recommended that the application be refused, for the following reason:

The development application is deficient of information to enable Council to carry out a proper and complete assessment of the application under Section 4.15 of the Environmental Planning and Assessment Act 1979.

ATTACHMENTS

- A. Assessment Report - CBLPP 4 June 2018
- B. Panel's Assessment - CBLPP 4 June 2018

DA-382/2015 ASSESSMENT REPORT

BACKGROUND

A Complying Development Certificate (CDC) 09/225/02 was approved by Steve Watson and Partners on 29 April 2010 relating to the construction of the school gymnasium at the site. The building, being the subject of this application has been fully constructed.

Since 2010, a number of complaints have been received by Council in regards to alleged unauthorised use of the existing gymnasium building for other purposes. These matters were investigated by Council, as required. In 2014, a number of complaints were received that the gymnasium was being utilised, unlawfully, for Church purposes. Multiple discussions occurred between representatives of the Church and Council Officers regarding this matter during 2014 and early 2015. The Church was advised in writing that the use of the gymnasium for Church purposes required development consent and therefore it was recommended that a Development Application be submitted to Council for consideration of the additional use of the gymnasium for Church purposes.

The application was submitted on 27 August 2015. Since the lodgement of the application, a number of complaints have been received by Council regarding the use of the gymnasium for Church functions, despite approval not being provided. These complaints have been investigated by Council's Compliance Department, and subsequent parking infringements, written warnings as well as a notice of intention to give Order was issued.

Over the course of the assessment of the application, the number of patrons (including staff) has changed from 260, to 230, to the now proposed 250 patrons. A detailed breakdown of the background of the assessment is provided below.

On 21 October 2015, Council wrote to the Applicant advising that the application was deficient of information to allow Council Officers to undertake a preliminary assessment of the application. The requested information was provided by the Applicant on 1 February 2016. The application was subsequently publically advertised from 24 February 2016 until 23 March 2016.

On 1 April 2016, upon completing a preliminary assessment of the application (including external peer review of the acoustic report submitted), Council wrote to the Applicant advising of additional information required to facilitate Council's assessment. The matters raised included inter alia the requirement for a revised acoustic report, traffic report, operational management plan, owner's consent for the proposed use of 13-17 Cecelia Street, and use of the site. Further information was provided by the Applicant on 16 June 2016. However, it should be noted that the use of 13-17 Cecelia Street does not form part of this development application.

Upon a review of the additional information submitted (including external peer review of the traffic report submitted), a further additional information request letter was issued by Council on 12 January 2017. The matters raised primarily related to use and acoustic impacts.

Further information to address the matters raised by Council was received 29 August 2017. A further letter was issued by Council on 30 October 2017 noting a number of inconsistencies provided within the documentation submitted 29 August 2017.

Further information to address Council's concerns was received 14 December 2017. Council wrote to the Applicant on 17 January 2018 outlining concerns regarding the incomplete and inconsistent nature of the information submitted. Information to address these matters was submitted by the applicant on 19 February 2018. The information submitted identified that the maximum number of patrons proposed is 250, including staff. The application was subsequently readvertised until 3 April 2018 and forms the basis of this report.

SITE ANALYSIS

The site is located at 31-33 Isabel Street, Belmore and is legally described as Lot 100 in DP 1143322. The site is zoned R3 – Medium Density Residential with a total site area of 2,493sqm (by Deposited Plan) and currently occupied by both the All Saints Greek Orthodox Church, located on the southern portion of the site, as well as a multi-use gymnasium associated with the All Saints Grammar School, located on the northern portion off the site (on the opposite side of Cecilia Street).

The gymnasium building has a frontage of approximately 31m to Etela Street to the north, whilst the Church building holds a frontage of approximately 27m to, and is generally orientated towards, Isabel Street to the south. The site also holds a frontage of approximately 86m to, with primary access to gymnasium obtained from, Cecilia Street to the east. The site holds service vehicle access to the Church building only, located centrally within Cecilia Street at the rear of the Church building.

The site is located opposite to, and generally associated with, the All Saints Grammar School, located across Cecilia Street to the east at 26-30 Etela Street, Belmore. The school comprises one large building containing all classrooms, offices and associated facilities as well as an outdoor courtyard and is also bound by Etela Street to the north, Isabel Street to the south and Cecilia Street to the west.

Development immediately surrounding the site to the north, south, east and west consists predominantly of established low density single detached dwellings interspaced with dual occupancy developments, consistent with the R3 – Medium Density Residential zone. As shown within Figure 2 below, land to the west of the site, on the western side of Sudbury Street, is zoned R4 – High Density. Development within this zoning consists of a variety of residential housing types including detached dwellings, dual occupancy developments and residential flat buildings. The site is located approximately 300m from the Belmore Centre and 350m from the Belmore Railway Station to the south west of the site.

Parking in the surrounding street network is generally unrestricted, however the immediate area surrounding the site is subject to parking restrictions (5 minute pick up and drop off only) during peak school times (7am – 9:30am and 2:30am-6pm on school days). Such restrictions are however limited to areas immediately adjacent to the school (and the subject gymnasium/hall building) and do not extend beyond the boundaries of these

properties. It is noted that given the long standing established residential nature of the locality that the majority of dwellings benefit from private off street parking.



Figure 1: Aerial Location Map



Figure 2: Zoning Map



Figure 3: All Saints Gymnasium, view north-west from Cecelia Street

PROPOSAL

The Applicant seeks the use of the existing gymnasium building for functions/social events associated with the All Saints Greek Orthodox Church in addition to the current usage as a gymnasium for the All Saints School.

Nature and Number of Events

The documentation submitted indicates that the proposed use entails functions associated with the Church, including the following:

- Palm Sunday luncheon;
- Mother's Day Dinner;
- All Saints Weekend luncheons and dinners;
- Father's Day Dinner;
- National Greek Independence Day Dinner;
- New Year's Eve Dinner;
- In addition to the above, a maximum of six additional Church functions (including a maximum of one fundraising event) would occur each calendar year. The additional Church functions will be limited to wakes, religious festivals and significant Church events.

In light of the above, the gymnasium will be utilised for Church proposes a maximum of twelve times a calendar year.

The proposed development is for the use of the school gymnasium for Church functions only and will not be used or leased to private or any other commercial interests or any non-church related activities. The gymnasium will not be used concurrently with the Church nor will it be used concurrently with functions associated with the school.

Proposed Hours of Operation

The proposed hours of operation of each of the proposed functions is as follows:

- Palm Sunday luncheon: Sunday 11am – 5pm.
- Mother's Day Dinner: Saturday 7pm – 12midnight.
- All Saints Weekend: Saturday and Sunday: 11am-5pm.
- Father's Day Dinner: Saturday 7pm – 12midnight.
- National Greek Independence Day Dinner: 11am-5pm (one day in October).
- New Year's Eve Dinner: 31 December 7pm-1am.
- Other Church functions (maximum of 6 functions): 9am-5pm for day events and 7pm to 12 midnight for night time events.

No Sunday evening functions are proposed.

The abovementioned hours of operation incorporate setting up and cleaning of the premises. No staff or patrons will be in the gymnasium outside of the hours proposed.

Proposed Maximum Patronage and Staff Numbers

The documentation submitted indicates that the proposal will provide for a maximum of 250 patrons including the maximum five staff at any one time. The staff will comprise cooks/chefs, wait-staff and event management personnel.

Amplified Music

The Plan of Management and Acoustic Report submitted outlined that there may be amplified music associated with the proposed use, both the PA system within the building as well as music and DJ.

No Building Alterations

The proposed development does not include nor require any building alteration or upgrade. The proposal seeks use of existing facilities only and does not include any physical works.

No Change to Existing School Gymnasium Activities

The proposed development does not seek any change to the existing primary use of the gymnasium for activities associated with the All Saints Grammar School. For clarity, the gymnasium will not be used for school use and church use simultaneously. The proposed development would not preclude the possibility of additional uses to occur at the site under the existing primary school function (e.g fete, fair or any other community event).

STATUTORY CONSIDERATIONS

When determining this application, the relevant matters listed in Section 79C of the Environmental Planning and Assessment Act 1979 must be considered. In this regard, the following environmental planning instruments, development control plans (DCPs), codes and policies are relevant:

- (a) State Environmental Planning Policy 55 – Remediation of Land (SEPP 55).
- (b) Canterbury Local Environmental Plan 2012 (CLEP 2012).
- (c) Canterbury Development Control Plan 2012 (CDCP 2012).

(d) Canterbury Development Contributions Plan 2013.

SECTION 4.15 ASSESSMENT

The proposed development has been assessed pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979.

Environmental planning instruments [Section 4.15(1)(a)(i)]

State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)

State Environmental Planning Policy 55 – Remediation of Land aims to promote the remediation of contaminated land for the purposes of reducing risk to human health or any other aspect of the environment. Clause 7 of SEPP 55 states that a consent authority must not consent to the carrying out of development unless it has considered whether the land is contaminated. If the land is contaminated, it must ascertain whether it is suitable in its contaminated state for the proposed use or whether remediation of the land is required.

The previous and existing land uses on the site are not identified as development that may give rise to contamination. Given that the site has been used for the purposes of a place of worship and education establishment, and a similar use will continue on the site, the site is considered to be consistent with State Environmental Planning Policy 55 – Remediation of Land.

Canterbury Local Environmental Plan 2012 (CLEP 2012)

This site is zoned R3 Medium Density Residential under Canterbury LEP 2012. The controls applicable to this application are:

Standard	Requirement	Proposal	Complies
Zoning	R3 Medium Density Residential	The proposed use is defined as a Place of Public Worship. Places of Public Worship are permissible with the R3 zone.	Yes – see comment below
Building Height	8.5m	No change	N/A
Floor Space Ratio	0.5:1	No change	N/A
Heritage Conservation	Clause 5.10(5) specifies that Council may request a heritage management document to determine any potential impacts on heritage items.	The site is located within the vicinity of three heritage items at 35-39 Isabel Street (items 15, 16 and 17 – described as federation inter war houses). Given the application does not consist of any physical building works, it will not result in any adverse impact on the heritage significance of these items. No heritage management document is required.	Yes

Permissibility

The site is zoned R3 – Medium Density Residential pursuant to CLEP 2012. The proposal seeks the use of the existing gymnasium building for functions/social events associated with the All Saints Greek Orthodox Church in addition to the current usage as a gymnasium for the All Saints School. The proposed use will be for Church functions only and will not be used or leased to private or any other commercial interests or for any non-church related activities. The proposed functions associated with the Church, include but are not limited to, wakes, social functions associated with Church celebrations such as feast day celebrations, Mother's and Father's Day lunches and New Year's Eve.

The gymnasium will solely be utilised for social events associated with the Greek Orthodox Parish located on the site. This use is consistent with the 'Place of Public Worship' definition specified within CLEP 2012. A 'place of public worship' is defined within CLEP 2012 as follows:

place of public worship means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.

A place of public worship is permitted in the R3 – Medium Density Residential Zone with development consent.

Zone Objectives

In accordance with Clause 2.3(2), the consent authority must have regard to the objectives for development in a zone when determining a development application.

The objectives of the R3 – Medium Density Residential Zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal seeks the use of the site for purposes associated with the All Saints Greek Orthodox Church, being a long standing non-residential use at the site. In this regard the proposed development is not applicable to a number of objectives outlined above.

Notwithstanding, the proposal will provide for the utilisation of the existing school gymnasium primarily outside of school hours, promoting and coordinating the orderly and economic use of the land, where the gymnasium would otherwise remain vacant and underutilised. In this regard, the proposal will contribute to the provisions of facilities and services to meet the needs of residents, consistent with the applicable zone objective outlined above. Although the proposed Church use is not a "day to day need" of residents, it is an important community resource which is permissible in the zone.

Proposed Environmental Planning Instruments [Section 4.15(1)(a)(iii)]

There are no proposed environmental planning instruments that impact on the proposed development.

Development Control Plans [Section 4.15(1)(a)(iii)]**Canterbury Development Control Plan 2012 (CDCP 2012)**

Given the nature of the proposal, a number of controls outlined within CDCP 2012 do not apply to the application. An assessment of the proposal against the relevant sections of CDCP 2012 is undertaken below:

5.8 – Non-Residential Development in Residential Zones

Part 5.8 of CDCP 2012 specifies the following:

- i. Non-residential development in a residential zone will be assessed for its impact on residential amenity.*
- ii. Non-residential development in a residential zone will only be acceptable where adverse impacts on the amenity of residents in the immediate area (for example through traffic generation, parking demand, noise or any other form of pollution that is incompatible with residential uses) are avoided or minimized.*
- iii. Council may impose conditions of consent to minimise any impact on residential amenity including limited the scale of the development, restricting hours of operation or the like.*

As detailed within the submissions received, there is tension with the surrounding residential properties. The tension has been caused because of the way the alleged unauthorised use has been poorly managed, rather than a natural and unavoidable tension. Primarily, the key issues expressed by the surrounding residents relate to noise and traffic and parking impacts. These matters are discussed below.

In respect to potential acoustic impacts, the proposed development includes provision for up to 250 patrons (including staff) for each event held at the site. The documentation submitted outlines that there may be amplified music associated with the proposed use, both the PA system within the building as well as music and DJ.

An Acoustic Assessment prepared by Inhabit Group (dated August 2015) accompanied the application. The assessment includes estimated noise emission levels at closest affected receiver, being 36 Etela Street (adjoining the site to the west). An addendum Acoustic Statement prepared by Inhabit Group (dated 30 January 2018) was submitted to address a number of matters raised by Council's Environmental Health Officer. Such matters include, but are not limited to, description of events along with confirmation of maximum patron numbers, details of logger location, Rating Background Level (RBLs) used for determining criteria requiring review and revision, construction materials of the gymnasium, location and consideration of services (i.e air conditioning), and potential for sleep disturbance due to noise levels associated with patrons outside and departing the venue.

Overall, the acoustic assessment considers the likely noise impacts of the proposed

development (including number of patrons, music etc) on the nearest residential receivers. The reports conclude that the estimated noise emissions at the closest affected receiver will comply with the relevant noise criteria with the exception of the New Year's Eve event between midnight and the proposed 1am closure. In this circumstance, the report states *"the estimated noise level at 36 Etela Street, Belmore boundary may exceed the NSW Office of Liquor, Gaming and Racing (OLGR) requirements. Therefore it is recommended that noise levels within the facility be reduced to 85dB(A) after midnight either by natural means or by a time limited on the sound reinforcement system"*. Based on this conclusion, it is recommended that the sound reinforcement system be switched off at 12midnight to ensure compliance with the relevant noise criterion is achieved and subsequently, any adverse amenity impact on nearby residential properties is minimised.

Furthermore, the report demonstrates that the proposal is capable of operation within the maximum acoustic disturbance levels, subject to adherence with operating parameters and procedures contained within the acoustic report, and submitted Plan of Management. As detailed below within this report, Council's Environmental Health Officer has recommended more stringent operational parameters than that specified within the acoustic report submitted. Therefore, the recommendations of the acoustic report have not been included as conditions of consent to avoid inconsistencies. Accordingly, it is recommended that all operational parameters and procedures outlined within the Plan of Management are imposed as conditions of consent to provide clarity to the scope of operations at the site.

The acoustic documentation submitted was also referred to Council's Environmental Health Officer. It is noted that Council's Environmental Health Officer, within their final referral comments provided on 7 March 2018, raised no concern regarding the proposal, subject to conditions of consent. The recommended conditions of consent include but are not limited to, restricting maximum noise levels to be emitted from the premises and enforcement of noise mitigation measures. The conditions outlined within the referral comments are recommended to be included in any determination, should the application be supported.

It is imperative to note that the gymnasium will not be used simultaneously with the school or the Church so the noise levels considered within the report reflect the proposed use of the site. Based on the information submitted with the development application, it is considered that the proposal will not result in any substantial adverse impacts, subject to compliance with the conditions of consent. However, it is acknowledged that if the development is not carried out directly in accordance with the recommended conditions of consent, there is the likelihood of adverse impacts to adjoining residents. Accordingly, and given the level of concern raised by adjoining properties regarding the proposed use, it is recommended that consent be granted on the basis of a twelve month trial period. This will enable the Applicant to demonstrate that it can comply with the conditions of consent and subsequently, potential impacts on neighboring properties are minimised.

6.1 – Access and Mobility

The application does not propose any physical works to the existing building. Access to the building will be as per existing. Subsequently, no further assessment against the provision of Part 6.1 of CDCP 2012 is required. Furthermore, the application was referred to Council's

Building Surveyor who raised no objection to the development.

6.8 – Vehicle Access and Parking

The aims of Part 6.8 of CDCP 2012 seek to ensure that development provides for adequate off-street car parking and access arrangements dependent on building type and to minimise overflow parking and other traffic impacts in residential streets and neighbours.

The existing gymnasium was approved and constructed as part of a Complying Development Certificate. No parking was allocated to the approved gymnasium use.

Based on a review of Council's records, the Church was approved by the former Canterbury City Council on 10 June 1968 (DA-68/2201) subject to the following conditions:

1. *Provision being made by the Church for the off-street parking of parishioners' vehicles to comply with the requirements of Council's off-street parking code.*
2. *The submission of satisfactory detailed plans and specification complying with the requirements of Ordinance 71 and the Local Government Act.*
It is pointed out that car parking provisions are to be made at 13 Isobel Street for the parking of approximately 27 vehicles.

There is no record on Council's file illustrating that the parking had been provided as required. Furthermore, it is noted that 13 Isobel Street is a residential dwelling. In light of this, no parking is provided onsite for the existing Church use.

To determine the parking and traffic impacts of the proposed development, a Traffic and Parking Assessment Report with survey of similar developments is required as specified within Part B1 of CDCP 2012.

A Traffic and Parking Assessment report prepared by TEF Consulting dated 29 June 2015 accompanied the application. An addendum to this report, also prepared by TEF Consulting dated 6 December 2017 was submitted to Council to address matters raised by Council during the assessment period. The traffic report included a traffic and parking survey undertaken at the site, for the existing 230 patrons that currently attend the Church.

Both reports were referred to Council's Team Leader – Traffic and Transportation for comment. In summary, the report and Council's assessment concludes the following:

- The Church currently caters for a maximum of 230 patrons with no on-site parking provided. Therefore, the Church use currently relies on on-street car parking to service the existing number of worshippers.
- The proposal seeks consent for a maximum of 250 patrons (including staff) to attend the site (additional 20 patrons). For the events proposed, the 250 patrons will be located within the gymnasium instead of the Church.
- The original Traffic and Parking Assessment report dated 29 June 2015 concluded that currently, when 230 patrons attended the site, a total demand of 90 (plus or minus 20) on-street car parking spaces was generated.
- The additional 20 patrons (max of 250 patrons including staff), would generate a need for a further 8 (plus or minus 2) on-street car parking spaces. This results in a total maximum generation of 120 on-street car parking spaces.

- The spare on-street car parking capacity within the surrounding road network is considered sufficient to accommodate the additional six to ten car parking spaces required to cater for maximum 250 patrons on site. Furthermore, based on Council's site visits and survey of the area, extending approximately 200m from the site, included within the survey area map (referred to as Figure 4 in the Traffic and Parking Assessment report prepared by TEF Consulting dated 29 June 2015 – see insert below), all properties comprise their own vehicular access from the respective street with the exception of three properties in St Clair Street, one property in Etela and Cecelia Streets as well as three properties in Adelaide and Hall Streets. This equates to approximately 96% of the surrounding properties within the survey area comprising their own vehicular access. This observation, supports the findings of the traffic and parking assessment, in that the majority of the surrounding residential properties do not rely on on-street parking for their benefit. Therefore, the surrounding streets are likely to have capacity to cater for the on-street parking generated by the proposal, as concluded within the traffic and parking assessment.
- The number of additional trips resulting from the additional six to ten cars is low when distributed on the road network. The report concludes that the additional traffic generation would constitute as an addition of one car per hour per turning movement at the nearest intersections, given the span of the on-street parking area coupled with the number of subsequent intersections. On this basis, it was concluded that the additional traffic generation would be negligible.
- A Church function will not occur simultaneously with a school function. The gymnasium and Church are not to be used concurrently for Church purposes. As outlined earlier within this report, this will be enforced via condition of consent to ensure potential traffic and parking impacts are not exacerbated.
- The proposal generates a requirement for 12.5(13) bicycle spaces. This requirement can be conditioned, should the application be supported.



Figure 4: Insert of the on-street parking survey included as Figure 4 within the Traffic and Parking Assessment Report submitted.

In addition to the above, the addendum dated 6 December 2017 also calculates car parking generation through considering the parking rate of one space per five people (accommodation capacity) for first 100 and then one space per two thereafter outlined as a guide within CDCP 2012. This results in a generation rate of 70 spaces for the proposed 250 patron capacity. The report outlines that in addition to the reliance of on-street parking, the 13 parking spaces provided on the school ground at 13-17 Cecilia Street can be relied upon, which will reduce on-street demand. However, owner's consent has not been provided for use of the site at 13-17 Cecilia Street. Furthermore, the application does not detail how the 13 parking spaces on the school grounds will be managed and utilised during the proposed Church events nor does this application extend to the school site located at 13-17 Cecilia Street. Therefore this option does not form part of Council's consideration. As discussed above, Council relies upon the traffic generation data provided as part of the original traffic and parking assessment report given this data provides a better representation of what occurs at the site from a traffic and parking view.

In light of the above, the application can be supported from a Traffic and Parking perspective. However, given the history of the site and number of complaints around unauthorised use, it is considered that approval be granted subject to a twelve months trial period to provide the Applicant the opportunity to demonstrate compliance with the conditions of consent and that subsequently, the site can operate with minimal impact on the surrounding road network. Accordingly, the following conditions of consent pertinent to traffic matters are recommended:

- A further traffic and parking assessment be undertaken by a suitably qualified traffic engineer during the twelve month trial period to provide an updated traffic and parking assessment that reflects the approved use of the site. The data relied upon as part of this assessment is to be from a 250 patron event held at the gymnasium on at least one of the dates approved. The updated report is to be submitted as part of any future application seeking continued use of the site to demonstrate whether the local road network can cater for the use, as proposed.
- Three RMS accredited traffic wardens are to attend the site on the event days approved by this consent. It is recommended that one warden count, manage and cease entry when capacity has been reached.
- Each traffic warden is recommended to attend 30 minutes prior to and ending of the Church function. It is recommended that two wardens patrol the streets considered within Figure 4 of the Traffic and Parking impact assessment for illegal parking. These wardens must record the number plates of any vehicles parked illegally and prior to the commencement of the functions, announce number plates and require the owner to park elsewhere.
- A report be provided to Council each month detailing the number of illegal parking incidents or any other parking and traffic issues relating to the use of the gymnasium for the nominated Church functions.
- A revised Plan of Management that reflects the above is to be submitted to Council prior to the commencement of operation of the site.

Subject to compliance with the recommended conditions of consent, the proposal is not considered to result in a level of traffic and parking impacts that cannot be suitably managed within the current road network.

6.9 – Waste Management

Council's Waste Contracts Coordinator reviewed the application and raised no objection to the proposal given it will not greatly affect the existing waste management operations.

Development Contributions Plans

Canterbury Development Contributions Plan 2013 applies to the site. However given the proposal does not comprise any physical works, it does not generate any payable contributions.

Planning Agreements [section 4.15(1)(a)(iiia)]

There are no planning agreements applicable to the proposed development.

The Regulations [section 4.15(1)(a)(iv)]

The proposed development is consistent with the relevant provisions of the Environmental Planning and Assessment Regulation, 2000.

Any Coastal Zone Management Plan [section 4.15(1)(a)(v)]

There is no coastal zone management plan that applies to the subject site.

The Likely Impacts of the Development [section 4.15(1)(b)]

The likely impacts of the proposal have primarily been discussed, where appropriate, within the body of this report. In light of the assessment against the relevant development controls, the proposed development is not likely to result in any unreasonable adverse environmental, social or economic impacts on the locality.

Likely impacts, in addition to those discussed within the body of this report, are discussed below:

Visual Privacy

The proposed use is to be wholly contained within the existing school gymnasium building which does not hold any opportunity for direct lines of sight nor overlooking and the proposal is not anticipated to present any visual privacy impact to surrounding properties from within this building.

Furthermore, the proposal does not comprise any physical works to the existing gymnasium.

Impact on the Public Domain

The proposed use is to be wholly contained within the existing school gymnasium building. However there will be the movement of persons between the school gymnasium and patrons' parked vehicles which will result in some disturbance.

On this basis, it is recommended that should the application be supported, a condition be imposed to ensure signs are appropriately located within the premises advising the congregation of the proximity of nearby residences and seeking quiet and orderly entry and

departure from the premises. The Management must ensure that supervisors give appropriate directions to, and take reasonable steps to, control noisy behaviour of persons entering and leaving.

Provided the recommended conditions of consent are complied with, it is considered that the impact of the proposed development on the locality will be acceptable.

Building and Fire Services

The application was referred to Council's Building Surveyor and Fire Safety Officer who raised no objection to the proposal, subject to conditions of consent.

Suitability of the Site [section 4.15(1)(c)]

The site is considered to be suitable for the proposed development, in that the proposal is for a Place of Worship which is permissible in the zone, subject to conditions. The proposed development does not result in changes to the building and as such the existing building remains appropriate for the site.

The submitted information, including Plan of Management, Acoustic Survey and Transport and Parking Assessment, have shown that the proposed increase in number of patrons can be accommodated within the site in an organised and functional manner which will not detrimentally impact on the adjoining and neighbouring residences.

On balance, the ongoing matters regarding the history of the site are not considered to outweigh the planning merits of the subject application as demonstrated.

However, the proponent is required to demonstrate that the increased number of patrons can be suitably controlled to avoid a detrimental impact on residential amenity. Given the history of unauthorised use at the site and the impacts noted in submissions received, it is not appropriate at this point to provide a permanent consent to the use of the gymnasium for Church purposes. On this basis, it is recommended that approval be granted on a twelve months trial period basis.

Submissions [section 4.15(1)(d)]

The application was originally advertised during the period 24 February 2016 to 23 March 2016 pursuant to Part 7 of Canterbury Development Control Plan 2012 (CDCP 2012). During this period a total of 14 individual submissions objecting to the proposal were received, as well as one petition of objection containing 253 signatures from 152 households.

The application was readvertised during the period 13 March 2018 to 3 April 2018. A total of eight submissions from five households and one petition comprising 300 signatures from 163 households were received.

The issues raised in those submissions have been summarised as follows:

- **Loss of Acoustic Amenity to residential properties.**

Comment

An acoustic assessment prepared by Inhabit Group was submitted as part of the application. The findings of the assessment concluded that the estimated noise emissions at the closest residential receiver will comply with the relevant noise criteria which the exception of the New Years Eve event between midnight and the 1am closure. The report subsequently recommended that noise levels within the facility be reduced to 85dB(A) after midnight either by natural means or by a time limit on the sound reinforcement system. Based on this conclusion, it is recommended that the sound reinforcement system be switched off at 12midnight to ensure compliance with the relevant noise criterion is achieved and subsequently, any adverse amenity impact on nearby residential properties is minimised.

Furthermore, the acoustic assessment submitted was referred to Council's Environmental Health Officer who raised no concern regarding the proposal, subject to conditions of consent. The recommended conditions of consent include but are not limited to, restricting maximum noise levels to be emitted from the premises and enforcement of noise mitigation measures. The conditions outlined within the referral comments are recommended to be included in any determination, should the application be supported. On this basis, the proposal will not result in any significant adverse acoustic impacts on nearby residential properties.

- **Reduced parking availability and increase in traffic generation.**

Comment

A traffic and parking assessment report was submitted as part of the development application and was referred to Council's Team Leader – Traffic and Transportation for review. Based on Council's assessment, it was determined that sufficient on-street parking is available to cater for the proposed number of patrons expected to attend the site. However, given the history of the site and number of complaints received around the existing unauthorised use of the site, the application is recommended for approval based on twelve month trial period. The trial period enables the Applicant to confirm that they can manage the site and mitigate potential impacts, as proposed.

- **Reduction in air quality (pollution and odour) from kitchen facilities.**

Comment

The proposed development seeks to utilise existing kitchen facilities within the school gymnasium to facilitate catering for events held at the site. The use of these facilities, having been designed and installed at the time of construction for school purposes is not considered to result in any unreasonable impact to air quality or odour to surrounding properties.

- **The proposed use is not appropriate within the residential zone.**
- **The proposal constitutes a “function centre” which is prohibited in the zone.**
- **The proposed use of the premises is against the intention of the site as a school facility.**
- **Potential for use of the premises for commercial purposes.**
- **The development does not meet the objectives of the R3 zone.**

Comment

The proposed use entails wakes and social functions associated with the Place of Worship located on the site. The proposed use satisfies the definition of a Place of Worship within Canterbury Local Environmental Plan 2012. A Place of Public Worship is a permissible use within the zone. The proposed use will primarily be for Place of Worship functions only and will not be leased to private or any other commercial interested or any non-church related activities.

The proposal will provide for utilisation of the existing school gymnasium when it is not in use for school purposes, thereby contributing to the orderly use of this land where the gymnasium would otherwise remain vacant. The proposed use will not detract from the primary use or intention of the building for general school purposes. This is recommended to be enforced through the imposition of a suitable condition of consent.

The proposal will contribute to the provision of facilities and services to meet the needs of residents, consistent with the applicable R3 zone objective and is considered acceptable in this regard.

- **Reduction of safety for residents and pedestrians.**

Comment

The proposed development seeks the use of the existing All Saints Grammar School gymnasium for functions associated with the Place of Worship.

The proposed use is to be wholly contained within the gymnasium only, with no element of functions or events to be carried out within the public domain. It is acknowledged that the use entails the coming and going of patrons from the gymnasium. Should the application be supported, it is recommended that a condition be included in the consent to ensure Management give appropriate directions to, and take reasonable steps to, control noisy behaviour of persons entering and leaving.

In this regard, the proposal is not considered to result in any reduction in the safety at the site and will maintain positive safety outcomes.

All vehicle movements related to the proposed use will be required to adhere to all other state legislation and applicable road rules at all times.

- **Oppose to the service of alcohol.**

Comment

The subject application does not approve the service of alcohol. A separate application with NSW Liquor & Gaming is required to serve alcohol at the premises.

- **The existing site operation is poorly managed.**

Comment

Council acknowledges that concern has been raised relating to the existing site circumstances, including both unlawful operation of the premises for Church purposes and general loss of amenity through the operation of the Church and associated functions. The information submitted as part of the application outlines that the site can operate as proposed with minimal adverse impact on surrounding residential properties, provided the recommended conditions of consent are complied with. On this basis, the application is recommended for approval, on a twelve month trial period basis.

- **Increased burden on resources of Council or the Police in monitoring the site.**

Comment

Based on Council's assessment, it has been recommended that a condition of consent be imposed to ensure that three NSW Roads and Maritime Services Accredited traffic wardens attend the site, on the approved event days. Each traffic warden is recommended to attend 30 minutes prior to and ending of the Church function. It is recommended that two wardens patrol the streets considered within the Traffic and Parking impact assessment for illegal parking.

These wardens must record the number plates of any vehicles parked illegally and prior to the commencement of the functions, announce number plates and require the owner to park elsewhere. Furthermore, the condition is recommended to require a report to be provided to Council each month detailing the number of illegal parking incidents or any other parking and traffic issues relating to the use of the gymnasium for the nominated Church functions. These conditions will reduce the reliance on Council or Police resources.

- **Loss of overall residential amenity.**

Comment

Based on Council's assessment of the application, an appropriate level of amenity will be maintained to surrounding residential properties. Furthermore, it is recommended that the application be approved for a twelve month trial period to allow Council to monitor the use of the site and be comfortable that the site can operate in accordance with the recommendations of the supporting documentation.

- **The use of the gymnasium will result in children playing in school grounds out of school hours.**

Comment

The application relates to the use of the site at 31-33 Isabel Street, Belmore only. The proposal does not grant consent for the use of the school at 13-17 Cecelia Street beyond the existing approval relating to the site.

- **Affected residents have been denied their right of expression on the DA as the application was not advertised correctly and re-advertising documentation was not available at Campsie Library.**

Comment

The application has been advertised and notified in accordance with Part 7 of Canterbury Development Control Plan 2012. The re-advertising documentation clearly outlined that the documentation was available for viewing at Campsie Customer Service and Riverwood Library.

- **The gym is not fire compliant for commercial functions.**

Comment

The application was referred to Council's Fire Safety Officer who raised no concern, subject to conditions of consent.

- **The gymnasium is currently being used for Church purposes with no governance, accountability or consequence.**

Comment

Council acknowledges the tension between surrounding residents and the proponent have been heightened by the history of unauthorised use of the site. Council's records indicate that a number of complaints have been received by Council prior to the lodgement of the subject application as well as since the lodgement of the application regarding the unauthorised use. Council has issued Notice of Intentions to issue orders at the site, as well as sent Rangers to monitor illegal parking and issue infringements, as required.

The intent of the DA is to formalise the variety of uses the gymnasium is used for and to ensure appropriate and relevant conditions of consent are imposed to best manage and mitigate future impacts of events on the subject site.

- **Will Council obtain an independent review of the addendum traffic and acoustic reports submitted.**

Comment

An independent review of the traffic report was undertaken in addition to the review undertaken by Council's Team Leader – Traffic and Transport. An independent review of the addendum acoustic report was not required and was

deemed acceptable, subject to conditions, by Council's Environmental Health Officer.

- **Does the existing Church comprise parking spaces and can a parking credit be applied to the site.**

Comment

The existing Church does not comprise parking spaces and no parking credit has been applied to the site nor has any parking credit been considered by Council as part of the assessment of the application.

- **Should the application be supported, will Council be allocating an increase in resources to ensuring parking regulations are met?**

Comment

Should the application be supported, a number of stringent conditions of consent are recommended to be imposed to ensure the site operates as proposed with minimal impact on the amenity of surrounding residential properties. Should it come to Council's attention that the premises is operating contrary to the conditions of consent, adequate provisions exist in the planning legislation to remedy such situation, if necessary.

- **Has Council considered Clause 35(5) of the State Environmental Planning Policy (Education Establishments and Childcare Facilities) 2017.**

Comment

Council is not required to consider State Environmental Planning Policy (Education Establishments and Childcare Facilities) 2017 given the proposal does not comprise the construction of an education establishment or childcare facility. Notwithstanding, Clause 35(5) of the SEPP outlines that *"a school (including any part of its site and any of its facilities) may be used, with development consent, for the physical, social, cultural or intellectual development or welfare of the community, whether or not it is a commercial use of the establishment"*. The proposal is not inconsistent with the intent of this clause.

- **How will Council ensure and enforce the gymnasium not to be used concurrently with the Church to ensure only one is in operation?**

Comment

Should the application be supported, a condition of consent is recommended to be enforced to ensure the Church and gymnasium are not used concurrently for Church purposes.

The Public Interest [section 4.15(1)(e)]

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments and by the consent authority ensuring that any adverse impacts on the surrounding area and environment are satisfactorily managed and mitigated as much as possible. This requires adherence to the recommendations

contained within the traffic and acoustic reports and conditions of development consent. The subject application is in the public interest subject to compliance with all requirements of this development consent.

CONCLUSION

The development application has been assessed pursuant to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 and all relevant development control plans, codes and policies. Given the history of complaints received regarding the unauthorised use of the site, a twelve month trial period is recommended to ensure the Applicant can demonstrate compliance with the conditions of consent and subsequently, the site can operate as proposed with minimal adverse impact on surrounding residential properties.

The Plan of Management prepared by the proponent as well as recommended conditions of consent must be strictly adhered to during the trial period.

It is considered that the proposed development will not cause unreasonable impacts to surrounding residential development subject to the above conditions, however in the interests of a precautionary approach, a twelve month limited consent is recommended.

RECOMMENDATION

THAT Development Application DA-382/2015 be **APPROVED** subject to the following conditions.

GENERAL

1. The development being carried out in accordance with the plans, specifications and details prepared by Candalepas Associates, Drawing Number DA-1100, Revision A, dated 28.1.16 except where modified by the conditions of this consent.
2. This approval is limited to a period of 12 months from the date of this consent, after which time any use of the premises whatsoever will require a Section 4.55 modification or a further development consent of the Council. In this regard an appropriate application is to be made to Council for consideration within three months of 4 June 2019, supported by appropriate information. If an application is submitted with appropriate documentation within this time (and requests for further information are addressed in the time limits imposed by the Council) the use may continue in accordance with this consent until the application is finally determined by the Council or the NSW Land and Environment Court on appeal (but in relation to the appeal, only if the appeal is lodged within 14 days of the Council's determination).
3. If an application is submitted in accordance with Condition 2 above is supported with appropriate documentation (and requests for further information are addressed in the time limits imposed by the Council) and this application is not determined by Council within the twelve month period referred to in Condition 2 then the use may continue in accordance with this consent until the application is finally determined

by the Council or the Land and Environment Court on appeal (but in relation to the appeal, only if the appeal is lodged within 14 days of the Council's determination).

4. The approved hours of operation and the approved social events/function associated with the All Saints Greek Parish Church **during the twelve month "trial" period on the site** are to be confined as follows:

EVENT	TIME
Palm Sunday (Sunday)	11.00 am to 5.00 pm
Mother's Day Dinner (Saturday)	7.00 pm to 12.00 am (Midnight)
All Saints Weekend (Saturday and Sunday)	11.00 am to 5.00 pm
Father's Day Dinner (Saturday)	7.00pm to 12.00 am (Midnight)
National Day	11.00 am to 5.00 pm
New Year's Eve	7.00 pm to 01.00 am
Maximum of five other events/functions per calendar year (limited to wakes, religious festivals, significant Church events and one fundraising event)	9.00am to 5.00pm for day events and 7.00pm to 12.00 am (Midnight) for evening events. No evening events (7pm-12midnight) are to occur on Sundays.

5. The hours of operation specified within Condition 4 incorporate setting up and cleaning of the premises. No staff or patrons are to be situated in the gymnasium outside of the hours proposed.
6. The proposed use of the gymnasium is limited to All Saints Greek Orthodox Parish Church related social and fundraising activities and is not to be leased or hired out for any other commercial or non-church related activities.
7. The maximum number of patrons per event/function is limited to 250 including a maximum of 5 staff and including a maximum of 3 traffic wardens.
8. The gymnasium must not be used simultaneously with the Place of Public Worship on the site.
9. The gymnasium must not be used simultaneously for events associated with the All Saints Grammar School and the Place of Public Worship.
10. The use is to be operated in accordance with the updated plan of management referred to in Condition 11 below.

11. The applicant/operator of the use shall submit a revised Plan of Management for this use. The Plan of Management shall specify how the premises are to be operated and shall address issues including, but not restricted to, the following:
- a. The holding of events;
 - b. The carrying out of activities likely to cause a nuisance;
 - c. Staffing details;
 - d. Patron capacity;
 - e. Patron behaviour & monitoring of persons;
 - f. Maintaining good relations with neighbours;
 - g. Noise and noise mitigation measures;
 - h. Security measures;
 - i. Entry and exit procedures;
 - j. Emergency evacuation procedures;
 - k. Food preparation procedures;
 - l. Delivery procedures;
 - m. The parking of vehicles;
 - n. The registering of complaints;
 - o. Dealing with complaints;
 - p. Cleaning of premises;
 - q. Disposal of waste/waste management procedures;
 - r. Patrol of the facility and surrounding road network to be undertaken by three Roads and Maritime Services (RMS) accredited parking control wardens during each event.

The Plan of Management shall be submitted to the Principle Certifying Authority as well as Council's Team Leader Public & Environmental Health prior to the operation of the use. The use shall be operated in accordance with the approved Plan of Management at all times. The applicant/operator of the use shall, as part of the Plan of Management, provide the Council and all neighbouring properties with a telephone contact number to be used for the registering of complaints. The applicant/operator of the use is to monitor the number and nature of complaints, shall formally register all complaints received and shall detail the action taken to rectify the problems that have arisen. This information shall be collated into a Complaints Log. The Complaints Log shall be made available to Council within 24 hours of a request being made.

12. The premises shall be operated so as to avoid unreasonable noise or vibration and cause no interference to adjoining or nearby occupants. In the event of Council receiving complaints and if it is considered by Council that excessive noise is emanating from the premises, the person(s) in control of the premises shall, at their own cost arrange, for an acoustic investigation to be carried out and submit a report to Council specifying the proposed methods for the control of excessive noise and/or vibration emanating from the premises. This acoustic investigation is to be conducted by a suitably qualified Acoustic Consultant recognised by the Australian Association of Acoustical Consultants (AAAC) and who has not been previously involved with the proposal. The report must be completed and submitted within 30 days from the date requested by Council. The measures set out in this report shall be approved by Council prior to implementation and shall be at full cost to the applicant.

13. The use of the premises shall not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the Protection of the Environment Operations Act 1997 and Regulations. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage other premises.
14. The sound reinforcement system must be switched off at 12midnight.
15. The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.
16. In regard to noise from events/functions/activities for the proposed use of the premises:
 - a. The LA10 noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz–8kHz inclusive) by more than 5dB between 7:00 am and 12:00 midnight at the boundary of any affected residence.
 - b. The LA10 noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz–8kHz inclusive) between 12:00 midnight and 7:00 am at the boundary of any affected residence.
 - c. Notwithstanding compliance with the above, the noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00 am.
17. The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil, or other harmful products.
18. All activities from the proposed use of the premises must be confined to wholly within the building.
19. The premises must operate in accordance with the Smoke-free Environment Act 2000 and the guidelines outlined in the Smoke-free Environment Amendment Regulation 2007 and the Smoke-free Environment Amendment Regulation 2009.
20. All doors leading into the gymnasium to be fitted with an automatic closer and shall remain closed, except for ingress and egress.
21. All fire exit doors to the outside to remain closed at all times, except in emergency situations.
22. Within 90 days of the commencement of the use of the premises, a report prepared by a suitably qualified Acoustic Consultant recognised by the Australian Association

of Acoustical Consultants (AAAC) who has not been previously involved with the proposal shall be submitted to Council certifying that the development complies with the requirements of the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance), Protection of the Environment Operations Act 1997 and Regulations, conditions of development consent. The report shall include post construction validation test results. A copy of the report must be provided to Council for record.

23. All parts of the premises used for the storage and preparation of food are to be constructed and fitted out strictly in accordance with the Australian New Zealand Food Standards Code, Australian Standard AS 4674-2004 (Design, construction and fit-out of food premises) and the conditions of any Council consent.
24. Appoint a Food Safety Supervisor and ensure the Food Safety Supervisor's Certificate is kept on the premises for inspection. For further information regarding Food Safety Supervisor requirements refer to the NSW Food Authority website at <http://www.foodauthority.nsw.gov>.
25. Within 90 days of the date of this consent, a City of Canterbury Bankstown Council Pre Occupation Food Premises Inspection report is to be obtained from Council confirming satisfactory compliance with applicable food standards and legislation.
26. Within 90 days of the date of this consent, a Business Registration Form must be completed and submitted to Council. This form is available online at www.cbcity.nsw.gov.au. In the instance details on the original registration form change, Council is to be notified of the change within seven (7) days of the change occurring.
27. A bicycle rack accommodating a minimum of 13 bicycles shall be provided at a suitable location on the site.
28. A further traffic and parking assessment must be undertaken by a suitably qualified traffic engineer (who has not been previously involved with the proposal shall) during the 12 month trial period. The assessment must provide an updated traffic and parking assessment that reflects the approved use of the site. The data relied upon as part of this assessment is to be from a 250 patron event held at the gymnasium on at least one of the dates approved. A copy of the report must be provided to Council for record. The updated report is to also be submitted as part of any future application seeking continued use of the site to demonstrate whether the local road network can cater for the use, as proposed.
29. At least three RMS accredited parking control wardens must be present during each event. One warden must be located at the front of the premises to monitor and count worshipper numbers and cease permitting entry once at capacity (maximum 250 patrons including 5 staff). The remaining two wardens must patrol St Clair Street, Sudbury Street, Cecelia Street, Adelaide Street, Etela Street, Hall Street, Isabel Street, Lark Street and Redman Parade for illegal parking.

30. The traffic wardens must record the number plates of any vehicles illegal parked, and prior to the commencement of any event, announce number plates parked illegally and require the owner to park elsewhere.
31. The Plan of Management must be amended to provide a minimum of three traffic wardens at least 30 minutes to and 30 minutes after the scheduled events to ensure worshippers do not illegally park in surrounding streets, can be approached by local residents and facilitate safe traffic management in the area.
32. Each traffic warden must be provided with brightly covered identification clothing.
33. A report must be provided to Council each month detailing the management strategies undertaken by the Greek Orthodox Parish (or any Proponent operating under this consent or DA-382/2015) and submit attendance records for each event.
34. The Plan of Management must be uploaded and available for public view on the website and social media pages of the subject Place of Public Worship.
35. The facility shall not be used under any circumstances for major events or festivals which are outside those days and times, or involve greater numbers.
36. Mechanical ventilation or other approved ventilation systems being installed in accordance with the minimum standards of the Building Code of Australia. The operation of machinery or mechanical ventilation systems must not give rise to a sound pressure level at any affected premises that exceeds the background (LA90) noise level in the absence of the noise under consideration by more than 5dB(A).
37. The Management of the facility being responsible at all times for the orderly dispersal of persons from the premises.
38. Signs being appropriately located within the premises advising the congregation of the proximity of nearby residences and seeking quiet and orderly entry and departure from the premises. The Management must ensure that supervisors give appropriate directions to, and take reasonable steps to, control noisy behaviour of persons entering and leaving.
39. Any security lighting or outdoor lighting shall not impact adjoining properties as a consequence of light spill.

WE ALSO ADVISE

1. This application has been assessed in accordance with the National Construction Code.
2. Any works to be carried out by Council at the applicant's cost need to be applied for in advance.
3. Compliance with the National Construction Code does not guarantee protection from prosecution under "The Disability Discrimination Act". Further information is

available from the Human Rights and Equal Opportunity Commission on 1800 021 199.

4. Our decision was made after consideration of the matters listed under Section 4.45 of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
5. If you are not satisfied with this determination, you may:
 - 5.1. Apply for a review of a determination under Sections 8.2-8.5 of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of this Notice of Determination and be accompanied by the relevant fee; or
 - 5.2. Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Sections 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979.

**CANTERBURY BANKSTOWN LOCAL PLANNING PANEL
DECISION – 4 JUNE 2018**

3 31-33 ISABEL STREET, BELMORE: USE OF EXISTING GYMNASIUM FOR FUNCTIONS/SOCIAL EVENTS ASSOCIATED WITH THE GREEK ORTHODOX PARISH IN ADDITION TO THE CURRENT USAGE AS GYMNASIUM FOR THE ALL SAINTS SCHOOL

Site Visit

An inspection of the site was undertaken by the Panel and staff members prior to the public hearing.

Written Submission

A written submission was received for this matter.

Public Addresses

The following people addressed the meeting in relation to this item:

- Mr Zisimos Markous (objector)
Two documents were tabled by the speaker, but were retained by the speaker immediately after the public session.
- Mr John Hills (objector)
The speaker tabled speaker notes which were prepared with the assistance of Mr Bruce Woolf, Solicitor.
- Mr Chris Kapsis and Father Apostolos Trifyllis (representing applicant)

Panel Assessment

Mr Karl Saleh was the community panel member present for the deliberation and voting for this matter.

The Panel is generally supportive of the application as proposed, including a twelve month trial period.

The use of this resource by the Church, at times when the school is not using it seems like an appropriate use, subject to the impacts being controlled.

However Mr Hill read a statement about permissibility of the application part of which is set out below:

“The report makes the point that the proposed use will be for church functions only and will not be used or leased for other private or commercial interests or for any non-church related activities. The proposed functions associated with the church include but are not limited to wakes, social functions associated with the church operations such as feast day celebrations, mothers’ and fathers’ day lunches and new year’s eve. In other words all functions proposed will be church related or associated social functions.

No religious worship by a congregation or religious group is proposed in the gymnasium. However under the definition, place of worship means a building or place used for the purpose of religious worship by a congregation or religious group although it can also have other uses as nominated. The gymnasium is not such a building or place.

It is understood that the gymnasium and the Greek Orthodox Parish Church are both erected on the same site. There is no doubt that the church is a Place of Public Worship being a building used for both religious worship by a congregation or religious group and also containing a hall for social events.

However the gymnasium is a building, the use of which is for educational purposes as part of the All Saints Grammar School.

The distinction seems to be accepted in the description set out in the proposed conditions of consent. Conditions 8 and 9 read as follows:

- "8. The gymnasium must not be used simultaneously with the Place of Public Worship on the site.*
- 9. The gymnasium must not be used simultaneously for events associated with the All Saints Grammar School and the Place of Public Worship."*

This therefore raises the issue whether the use is permissible as a Place of Public Worship."

The definition of place of public worship is as follows:

place of public worship means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.

The point made by the submission is that the building or place that is being considered, is to be the place of religious worship.

While the "place" could be the single allotment of land on which both the gymnasium and the church is located, the difficulty in this case is that a complying development certificate has been issued specifically for the school gymnasium under the (former) provisions of the SEPP Infrastructure 2007 relating to 'educational establishments'. The description of the development is

"Construction of a Gymnasium/Games Hall building with associated amenity facilities and alterations to the rear of the existing church hall"

Further, while the gymnasium and the church are on the same allotment it is clear that there are two separate areas of land being used for two separate uses. The church is

used as a place of public worship whereas the gymnasium is used for the purposes of a school. The concern is that there are two separate buildings and two separate places.

The Panel is concerned that there may be an issue of permissibility in the circumstances of this case, and the Panel is of the opinion that legal advice be retained to resolve this issue.

The Council could obtain its own advice, or request that the applicant obtain advice.

In terms of the merit issues of the application, as noted above the Panel is supportive of the application (subject to the permissibility) and subject to addressing a number of issues discussed below.

The first matter is the Plan of Management. The Panel is of the opinion that a comprehensive Plan of Management should be prepared, prior to the issuing of any consent and the Panel agrees that the matters listed in the proposed condition 11 should now be incorporated into the final Plan of Management.

In addition to the matters listed in proposed condition 11, the following additional matters are to be addressed:

- a) Controlling any areas where smokers may congregate during events, and in particular any area is to be away from the rear of the site adjacent to number 36 Etala Street;
- b) The procedure where residents and the Council are notified of the details of any event, prior to that event occurring;
- c) Details of condition 31 to be included;
- d) Condition 33 should be incorporated into the Plan of Management that the Church keep details of events, including:
 - 1. Event name and type;
 - 2. Attendance (patrons and staff);
 - 3. Day, date and hours of the event;
 - 4. Confirmation that the gymnasium was not used simultaneously with the Church/School;
 - 5. Details of any complaints received and confirmation of how each complaint was dealt with;
 - 6. Confirmation that the RMS wardens attended the event. List of their duties undertaken, time undertaken and findings;
 - 7. Confirmation of time the sound/PA system was switched off for the event;
 - 8. Confirmation that the doors were shut during the event.
- e) Details of reworded condition 35.

In addition, the Panel would like further advice on some of the conditions which address the noise impacts. The industrial noise policy refers to sleep disturbance issues after 10pm. Condition 22 refers to the Environmental Noise Control Manual (Sleep Disturbance). The Panel is unsure how this relates to the requirements set out

in condition 16, and the Panel suggests that all the noise control issues be reviewed to ensure that appropriate controls are in place to address impacts while the premises are being occupied, and when the premises are being vacated. The Panel is of the opinion that the conditions should ensure the operation conforms with the Noise Control Manual Sleep Disturbance requirements given the location of the premises within a residential neighbourhood. Condition 36 to be reworded to ensure it is clear that it relates to the kitchen ventilation.

Condition 35 could also be reworded so that it is clear that the facility is not to be used by the Church under any circumstances, for any events other than the approved events.

CBLPP Determination

THAT Development Application DA-382/2015 be **DEFERRED** to enable legal advice be obtained regarding the permissibility issue as referred to in the panel assessment section, and the additional merit issues referred to in the panel assessment section to be addressed (subject to the resolution of the permissibility issues).

Vote: 4 – 0 in favour

Canterbury Bankstown Local Planning Panel - 6 May 2019

ITEM 6	Delegation of Specific Functions from Canterbury Bankstown Local Planning Panel to the General Manager
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AUTHOR	Chairperson
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PURPOSE AND BACKGROUND

The purpose of this report is to seek the Panel's support to delegate certain functions of the Canterbury Bankstown Local Planning Panel under Section 2.19(1)(a) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) in relation to small scale Development Applications, to the General Manager.

On 23 February 2018, the Minister issued a local planning panel direction on referral criteria and procedural requirements for Panels with two key objectives in mind:

- *ensuring LPPs focus on contentious and complex development applications and applications with the greatest corruption risk, while council staff continue to determine routine applications;*
- *building flexibility into the criteria to reflect differences in the types of development and community expectations across local government areas.*

Canterbury Bankstown Council is a Schedule 2 Council under the Ministerial Direction Referral Criteria. A summary of Local Planning Panels Direction **Referral Criteria** on determining Development Applications for Schedule 2 councils is shown below:

1. Conflict of interest

Development for which the applicant or landowner is:

- the council
- a councillor
- a member of staff who is principally involved in the exercise of council's functions under the EP&A Act
- a member of Parliament or
- a relative of one of the above.

2. Contentious development

- A DA that receives 10 or more unique objections.

3. Departure from development standards

Development that contravenes a development standard imposed by a planning instrument by:

- more than 10% or

- non-numerical development standards.

4. Sensitive development

- designated development
- Residential Flat Building, four or more storeys in height
- demolition of a heritage item
- development for the purposes of new premises that will require:
 - a club licence or
 - a hotel (general bar) licence or
 - an on-premises licence for public entertainment venues
- development for the purpose of sex services premises and restricted premises
- DAs for which the developer has offered to enter into a planning agreement.

As the Panel would know, there are a number of small scale development applications that are currently being referred to the Panel for determination such as dwellings, secondary dwellings, dual occupancy development and various outbuildings because they meet the referral criteria of breaching a development standard by more than 10%. Under the referral criteria, “determination” of the application by the Panel would mean that even applications that are proposed to be refused would be required to be referred to the Panel for their determination under the current arrangements.

Council has requested that the Panel consider providing the General Manager with the authority to determine the following DAs, where these DAs contravene a development standard imposed by an environmental planning instrument by more than 10% or non-numerical standards:

1. all development applications for developments which would be considered to be Class 1 development under the National Construction Code, provided the development application does not involve development of a kind specified in Items 1, 2 and 4 of the Ministerial Direction “Local Planning Panels Direction—Development Applications” dated 23 February 2018.
2. all development applications for developments which would be considered to be Class 10 development under the National Construction Code, provided the development application does not involve development of a kind specified in Items 1, 2 and 4 of the Ministerial Direction “Local Planning Panels Direction—Development Applications” dated 23 February 2018.

In many instances, a 10% variation to a development standard does not provide adequate opportunity for a development to respond to a particular site issue. As an example, under the provisions of Clause 4.3 (2B) (a) of Bankstown Local Environmental Plan 2015, the maximum wall height for a secondary dwelling is 3.0 metres. At any time the wall height of the proposed development exceeds 3.3 metres, the development application must be reported to the Panel for determination, due to the proposal involving a development that seeks a variation to a development standard of more than 10%. After accounting for standard floor to ceiling heights and slab thickness, any localised issues such as slope or flood affectation (as examples) has the potential to lead to a breach of the standard by more than 10%.

The developments referred to above are small scale developments which are generally classified as Class 1 to 10 structures under the National Construction Code and have localised

impacts. The Council considers there is little utility in the Panel determining these applications. Further, the council is of the view that not having to consider these applications will provide the Panel with greater scope to meet the Ministers key objective for Local Planning Panel's to focus on contentious and complex development applications and applications with the greatest corruption risk, while council staff can continue to determine routine applications.

Section 2.20 (8) of the EPA Act gives the Panel authority to delegate any function of the Panel to the General Manager of the Council. Should the Panel resolve to delegate the functions detailed in the report to the Council's General Manager, it will not remove the panel's authority to determine such DAs should there be occasions in the future where the General Manager is of the view that it would be more appropriate for the Panel, rather than Council, to determine such DAs.

POLICY IMPACT

There are no policy impacts from the recommendation.

FINANCIAL IMPACT

There are no financial impacts from the recommendation.

COMMUNITY IMPACT

There are no community impacts from the recommendation.

RECOMMENDATION

1. In accordance with the provisions of 2.20 (8) of the Environmental Planning and Assessment Act 1979, the Panel delegate to the General Manager of Canterbury Bankstown Council the authority to determine the following Development Applications, where the Development Applications contravene a development standard imposed by an environmental planning instrument by more than 10% or non-numerical standards:
 - 1.1 all development applications for developments which would be considered to be Class 1 development under the National Construction Code, provided the development application does not involve development of a kind specified in Items 1, 2 and 4 of the Ministerial Direction "Local Planning Panels Direction—Development Applications" dated 23 February 2018.
 - 1.2 all development applications for developments which would be considered to be Class 10 development under the National Construction Code, provided the development application does not involve development of a kind specified in Items 1, 2 and 4 of the Ministerial Direction "Local Planning Panels Direction—Development Applications" dated 23 February 2018.

ATTACHMENTS

A. LPP Instrument of Delegation

Instrument of Delegation

Environmental Planning and Assessment Act 1979

Delegation of Functions from Canterbury Bankstown Local Planning Panel to the General Manager

By resolution of the Canterbury Bankstown Local Planning Panel dated 6 May 2019 the Panel pursuant to Section 2.20(8) of the Act delegates to the General Manager of Canterbury Bankstown City Council the Functions specified or described in Schedule 1 of this Instrument of Delegation.

1. Definitions

1.1 In this instrument

Act means the *Environmental Planning and Assessment Act 1979*.

Council means Canterbury Bankstown Council.

Function means a function of the Canterbury Bankstown Local Planning Panel

General Manager means the person appointed by the Council pursuant to s334 of the *Local Government Act 1993* to the position of General Manager, and a person appointed by the Council pursuant to s336 of the *Local Government Act 1993* to act in the vacant position of General Manager.

Panel means Canterbury Bankstown Local Planning Panel.

2. Commencement

2.1 The delegation commenced on 6 May 2019.

Schedule 1

Functions

1. In accordance with the provisions of 2.20 (8) of the Environmental Planning and Assessment Act 1979, the Panel delegate to the General Manager of Canterbury Bankstown Council the authority to determine the following Development Applications, where the Development Applications contravene a development standard imposed by an environmental planning instrument by more than 10% or non-numerical standards:

- 1.1 all development applications for developments which would be considered to be Class 1 development under the National Construction Code, provided the development application does not involve development of a kind specified in Items 1, 2 and 4 of the Ministerial Direction "Local Planning Panels Direction—Development Applications" dated 23 February 2018.

- 1.2 all development applications for developments which would be considered to be Class 10 development under the National Construction Code, provided the development application does not involve development of a kind specified in Items 1, 2 and 4 of the Ministerial Direction “Local Planning Panels Direction—Development Applications” dated 23 February 2018.
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Anthony Hudson

Chairperson of Canterbury Bankstown Local Planning Panel

Date: 6 May 2019